

EXHIBIT 4

Hearing Transcripts

From:

Enforcement Action 2010-49

October 29, 2010 Hearing

Agenda Item No. 15A

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MEETING
STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD
OPEN SESSION

THE RESOURCES BUILDING
1416 NINTH STREET
AUDITORIUM
SACRAMENTO, CALIFORNIA

FRIDAY, OCTOBER 29, 2010

8:35 A.M.

JAMES F. PETERS, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 10063

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Ms. Teri Rie, Vice-President

Mr. Butch Hodgkins, Secretary

Mr. John Brown

Ms. Emma Suarez

STAFF

Mr. Jay Punia, Executive Officer

Mr. Len Marino, Chief Engineer

Mr. Ali Porbaha, Supervising Engineer

Mr. Curt Taras, Supervising Engineer

Mr. Gary Lemon, Staff Engineer

Ms. Angeles Caliso, Staff Engineer

Ms. Deborah Smith, Legal Counsel

Ms. Amber Woertink, Support Staff

DEPARTMENT OF WATER RESOURCES

Mr. Ward Tabor, Assistant Chief Counsel

Ms. Robin Brewer, Staff Counsel

ALSO PRESENT

Mr. Thomas S. Knox, Knox, Lemmon, Anapolsky & Schrimp

Ms. Meegan Nagy, United States Army Corps of Engineers

Mr. Robert Sieglitz

Mr. Paul Devereux, Reclamation District 1000

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PROCEEDINGS

PRESIDENT CARTER: Good morning, ladies and gentlemen. Welcome to the Central Valley Flood Protection Board meeting. This is a continuation of a meeting from -- that we started yesterday. And just for the record, the Board did meet as agendized on October 28th in the Bonderson Building across the street from the Resources Auditorium here. And we are continuing on with our agenda, as published, on Item 15, which is a hearing decision.

This is an encroachment removal enforcement hearing for Mr. Robert and Mrs. Carrie Sieglitz, 2017 Garden Highway in Sacramento. This is regarding Encroachment Removal Enforcement Notice number 2010-49, dated April 12, 2010, that was sent to Mr. Robert and Ms. Carrie Sieglitz to consider ordering removal of encroachments and restore levee slope damage by toe excavation of the east bank levee of the Sacramento River Flood Control Project in Sacramento.

Just a brief overview, the enforcement hearing process is one where we invite the staff to make a presentation of the facts and the Enforcement Action. We invite the respondent to then respond to those allegations. And we invite both staff and the respondent to have expert testimony. This is a semi-formal hearing.

1 We don't have cross-examination of witnesses. We invite
2 each party to present evidence and the Board will base its
3 decision based on the evidence presented.

4 So with that, we'll also invite the members of
5 the public to speak both in support and in opposition of
6 the action. So with that, are there any questions about
7 the process?

8 That's right. If there are people that do wish
9 to address the Board today, it helps us if you will fill
10 out cards, speaker cards that are available on the table
11 at the entrance to the auditorium as well as from staff
12 here in the front, that ensures that we know to recognize
13 you but we will be asking throughout the process today.

14 So with that, we --

15 EXECUTIVE OFFICER PUNIA: I want to make an
16 announcement.

17 PRESIDENT CARTER: Mr. Punia.

18 EXECUTIVE OFFICER PUNIA: Jay Punia, I just want
19 to make a request. Today, we don't have written
20 transcription person, so we are recording this meeting, so
21 I want to request everybody to use the mic. Only then
22 your message can be recorded. So please come to the
23 podium or use the speakers there.

24 PRESIDENT CARTER: Very good. So with that, Mr.
25 Punia, would you please call the roll.

1 EXECUTIVE OFFICER PUNIA: All the Board members
2 are present.

3 PRESIDENT CARTER: Okay, very good.

4 All right, so I'm going to call the hearing to
5 order. Again, this is Encroachment Removal Enforcement
6 hearing for Mr. Robert and Ms. Carrie Sieglitz for 2817
7 Garden Highway Sacramento California.

8 Mr. Porbaha, good morning. Welcome.

9 SUPERVISING ENGINEER PORBAHA: Good morning,
10 President Carter and members of the Board. Ali Porbaha,
11 Board staff. I would like also to introduce my colleague
12 here Ms. Angeles Caliso, who is part of our team. Also,
13 we have members acts from the U.S. Army Corps of Engineers
14 and local maintaining agency RD 1000 here in support of
15 the enforcement.

16 This Enforcement Action is number 2010-49
17 respondents are Mr. Robert and Ms. Carrie Jo Sieglitz,
18 located at 2817 Garden Highway, Sacramento, California.

19 In a snapshot, I would discuss the following
20 subjects in this presentation regarding the proposed board
21 action: Applicable laws and regulations, the comments
22 related to the easement and background about chronology of
23 the communications and other events related to this case,
24 basis for a staff recommendation related to 3 items. Item
25 1, waterside levee toe cut. Item 2, uncontrolled fill for

1 secondary driveway. And item 3, Conex box, Conex
2 containers, metal roof and boat carrier.

3 We'll have comments from agencies. And the
4 analysis of the CEQA will come next. And at the end, we
5 will have conclusion and a staff recommendations. And at
6 the end of this presentation, we'll have comments by
7 federal and local agencies through representatives from
8 the U.S. Army Corps of Engineers and Reclamation District
9 1000.

10 This is the vicinity map of the project. This is
11 the lower east side of this is the downtown Sacramento.
12 I-80 goes from east to west. And Sacramento River goes
13 from north to south. And the property is located adjacent
14 to the Sacramento River in the north quadrant of this map.

15 Let's look at more detail of the vicinity -- or
16 the location of this property. The property is bounded by
17 Garden Highway in the east side, and the Sacramento River
18 in the west side flowing toward the south. This is
19 approximate property boundary shown in this slide.

20 Most of the unauthorized encroachments are
21 located in the southeast of the property as shown in
22 this -- in this area. And we will focus more on this area
23 in the next slide to look at how it looks like.

24 This is a survey which was done by Psomas
25 Surveying -- or Engineering on June 2nd, 2010. This is

1 part of the staff report Attachment D. And the Garden
2 Highway in here, is the limits of Garden Highway in the
3 shaded area. And Sacramento River is in the left side
4 here, flowing south. And this red dotted lines shows the
5 respondent's property.

6 And what we see here is the limits of the levee
7 here. The new shaded area is the limits of the
8 approximate levee that we have. And this is the easement
9 for flood control, which encompasses all the levee portion
10 goes to the lower mark in the Sacramento River.

11 The most of the encroachments are focused in the
12 southeast portion of the property, which I will show in
13 the next slide.

14 So this is again the location of the Garden
15 Highway in the shaded area. And this is the Conex boxes
16 in the left side. And the shaded area surrounding the
17 Conex box, Conex containers are the area in which the
18 waterside levee slope has been cut. See it encompasses
19 most of this Conex box going towards the top of the levee.
20 This is a plan view. We will see the cross-sections in a
21 few minutes.

22 Based on the Enforcement Action number 2010-49,
23 the request is to -- for the unauthorized
24 encroachments -- three unauthorized encroachments. In the
25 notice there are 6 items. We put them in these three

1 categories for -- three categories.

2 Item 1, is related to toe excavation -- the
3 excavation of the waterside levee toe to accommodate two
4 Conex containers and a boat carrier.

5 Item 2, placement of uncontrolled fill material
6 on the waterside slope perpendicular to the levee, to
7 serve as a secondary driveway.

8 And Item 3 is placement of encroachments two 8.5
9 feet tall Conex containers, metal roof resting on the
10 levee slope, and a boat carrier within 10 feet of
11 the -- from the waterside levee toe.

12 The applicable laws and regulations are related
13 to California Water Code and also Title 23. California
14 Water Code Section 8534 says that the, "Board has the
15 authority to enforce..." codes,"'...the erection,
16 maintenance, and protection of such levees, embankments
17 and channel rectification as will, in its judgment, best
18 serve the interests of the State'".

19 The California Water Code section 8708, Board has
20 given assurances to the U.S. Army Corps of Engineers to
21 maintain and upgrade federal flood control works in
22 accordance with federal law.

23 California Water Code section 8709 says if the
24 respondent fails to remove the unauthorized encroachment,
25 the Board may commence a suit to abate the nuisance.

1 The California Code of Regulations Title 23,
2 Section 6 Subsection (a), "Every proposal Or plan of
3 work...requires Board approval prior to commencing any
4 work".

5 California Code of Regulations Title 23, section
6 112 subsection (a), "The Board requires applications to be
7 filed for all proposed encroachments within the floodways
8 under its jurisdiction, (identified in table 8.1) and on
9 levees adjacent thereto, on any stream, which may affect
10 those floodways".

11 California Code of Regulations Title 23, Section
12 20, subsection (a), "The Executive Officer may institute
13 an enforcement proceeding...to the landowner or person,
14 (referred to hereafter as the respondent), owning,
15 undertaking or maintaining a work that is in violation of
16 this division or threatens the successful execution,
17 functioning, or operation of an adopted plan of flood
18 control".

19 Now, let's discuss about the easement documents
20 that are available. Based on the documents, a deed
21 granted by the owner first initial owner, Valentine S.
22 McClatchy to Reclamation District 1000 on April 5th, 1913.
23 The staff report noted January 26th, 1913, so here for the
24 record we correct the date. The correct date is April
25 5th, 1913. This is located on a staff report Section 5.2.

1 This deed says that quote, "For a right of way
2 and easement for the purposes of building, constructing,
3 enlarging and maintaining thereon, a levee or embankment
4 for reclamation purposes only, in accordance with plans
5 that have been or may hereafter be adopted by RD 1000".
6 This document is available in a staff report Attachment F
7 Exhibit A.

8 In addition, on June 26, 2009, Reclamation
9 District 1000 and SSJD through the Central Valley Flood
10 Protection Board executed a joint use agreement, CA05049,
11 in which the following rights were granted to the Board:

12 "Construct, reconstruct, enlarge...repair and use
13 of flood control works, which shall include, but no be
14 limited to...patrol roads, levees...", unquote.

15 "Clear and remove from said flood control works
16 any and all natural and artificial obstructions,
17 improvements, trees, and vegetation necessary for
18 construction, operation, maintenance, repair,
19 reconstruction, and emergency flood fight."

20 This document is available in the staff report
21 Attachment F, Exhibit B.

22 Let's look at the chronological issues related to
23 this project. On October 10th, 2008, Reclamation District
24 1000 manager wrote a letter to respondent and identified
25 the cut on levee, and the next for Board permits. This

1 document is available in a staff report, Attachment B,
2 Exhibit A.

3 On October 18, 2008, a letter from sent from
4 respondent to Reclamation District 1000 stating no cut
5 done and work was outside of easement. This document is
6 available on a staff report, Attachment B, Exhibit B.

7 On January 2010, U.S. Army Corps of Engineers
8 noted the levee cut and containers during their periodic
9 inspection. This one is available in the staff report
10 Attachment C.

11 On March 9, 2010, Board staff visited the site
12 with the reclamation district manager and DWR inspector.

13 On March 16, 2010, a second letter was sent from
14 reclamation district to respondent noting the additional
15 fill for driveway. This letter is noted on staff report
16 Attachment B, Exhibit C.

17 Finally, on April 12th, 2010, Board issued
18 Enforcement Order 2010-49. This enforcement is on staff
19 report Attachment A.

20 On May 6, 2010, the second site visit, as
21 requested by the respondent, Board staff and the
22 reclamation district manager participated in this site
23 visit.

24 On May 27th, 2010, Respondent requested hearing
25 via his attorney, Mr. Knox. This one is recorded on staff

1 report Attachment B, Exhibit G.

2 On June 30th, 2010, the respondent's attorney
3 submitted request under California Public Records Act.
4 And all documents available were provided on July 26th,
5 2010.

6 On September 3rd, 2010, U.S. Army Corps of
7 Engineers issued a letter to board requiring a Corrective
8 Action Plan. This letter is in the staff report
9 Attachment B, Exhibit D.

10 On September 20th, 2010, Reclamation District
11 1000 letter was sent to the Board in support of U.S. Army
12 Corps of Engineers' letter. This letter is in staff
13 report Attachment B, Exhibit F.

14 On September 28, 2010, Board letter to U.S. Army
15 Corps of Engineers with proposed Corrective Action Plans
16 completed by June 16, 2011. This letter is in the staff
17 report Attachment B, Exhibit E.

18 And in October 19th, 2010, Board staff hand
19 delivered a staff report on CD with additional documents
20 related to this enforcement to respondent's attorney.

21 Now, let's look at the encroachments.
22 Encroachments are categorized in three items here.

23 The first one is related to waterside levee toe
24 cut. The picture here is taken from the
25 property -- respondent's property. If you imagine this

1 one here, the Garden Highway is in your left side, and the
2 Sacramento River is in the right side. Here is a view
3 that shows the two Conex boxes, a metal roof with grass at
4 the top, and also cuts in the waterside of the levee.

5 There is violations to California Code of
6 Regulations, Title 23, Section 112 Subsection (b), "Banks,
7 levees, and channels of floodways along any stream, its
8 tributaries or distributaries may not be excavated, cut,
9 filled, obstructed, or left to remain excavated during the
10 flood season".

11 This is another snapshot of the same cut from
12 different angle. Now, the Conex box is in the left side
13 and in the right side is the Garden Highway.

14 Violation of California Code of Regulations,
15 Title 23, Section 120(a) subsection (24), quote, "The
16 finished slope of any project levee construction or
17 reconstruction must be three feet horizontal to one foot
18 vertical or flatter on the waterside...", unquote.

19 In addition, in California Code of Regulations
20 Title 23, section 133(a) says quote, "The owner or
21 permittee must maintain the waterward slope of the
22 levee...in the manner required by Reclamation District
23 1000".

24 This is a full view of the Conex containers.
25 Again, the left side is the -- parallel to the these Conex

1 boxes is the Garden Highway and in the right side is the
2 Sacramento River.

3 We can see the metal roof, with regards to the
4 grasses, which are at the top of that, and -- if
5 originally it was not cut, we will see documentation that
6 would be something similar to this one was the original
7 slope that was supposed to be here. So this slide is
8 Conex boxes are located in the cut portion of the slide,
9 as we will demonstrate in a few minutes.

10 This is the plan view of the property prepared by
11 the private company. Psomas engineers are surveying. In
12 the left side, again, you can see the Garden Highway and
13 in the right side is the Sacramento River.

14 Most important cross sections that we will see
15 today are related to Section BB, and CC and DD. That's
16 the one which we want to focus on that. Section BB
17 encompasses the cut in the levee and the Conex box.
18 Section CC shows the cut in the levee and the location of
19 the boat carrier, which has been closed to the cut area.
20 And Cross Section DD, which has the unauthorized fill in
21 that area.

22 This view shows both the cross section and the
23 plan view of the property. We focus now a Section BB in
24 which these Conex boxes, Conex containers are located.
25 This is an enlarged version of that. Based on the --

1 VICE-PRESIDENT RIE: Can you make that larger.
2 We can't see it.

3 SUPERVISING ENGINEER PORBAHA: Let me see.

4 PRESIDENT CARTER: It's also part of Attachment E
5 in the staff report.

6 SUPERVISING ENGINEER PORBAHA: Just increase this
7 one here.

8 VICE-PRESIDENT RIE: We can't see what's up
9 there.

10 SUPERVISING ENGINEER PORBAHA: This is Cross
11 Section BB, the one which passes through the Conex boxes.
12 Based on the as-builts, from the U.S. Army Corps of
13 Engineers, the width of the crown is 30 feet. So if we
14 keep this width from the hinge point of the land side for
15 30 feet here, we get this point here, which is the top of
16 the hinge point for the land side, because
17 initially -- because in this property the right side or
18 the waterside has been developed, extra fill has been put
19 on the levee in order to make it flat for the parking or
20 for the fence.

21 So the location of the fence is here. So they
22 made it flat. There are extra once -- extra fill is on
23 here. So here shows 30 feet width of the crown and 40
24 feet of public right of way based on the Sacramento
25 county, 12.5 feet of public utility easement. And the

1 Central Valley Flood Protection Board easement goes
2 anywhere from the 50 feet from the center line of the
3 levee to the left side, to -- up to the lower mark side in
4 the Sacramento River.

5 This is Section BB. You can see the metal roofs
6 at the top here. And the shaded area shows the cut her in
7 which most of the Conex boxes are located in that area.

8 This is Section BB. If you look at the plan
9 again, you look at Section CC --

10 VICE-PRESIDENT RIE: Can you explain what that
11 red line is?

12 SUPERVISING ENGINEER PORBAHA: That line is the
13 based on the slope of what 3 to 1. This is based on the
14 Title 23, the minimum slope as we read just a few minutes
15 ago. The minimum slope is -- the minimum slope is 3
16 horizontal to 1 vertical or flatter in the waterside.

17 VICE-PRESIDENT RIE: Is that how it was built and
18 then you're saying they cut into it?

19 SUPERVISING ENGINEER PORBAHA: No. When it was
20 built, the slope was higher than that. It was about maybe
21 4 or 4.5. If you allow me, I will go back and show you
22 how it was in the original one.

23 PRESIDENT CARTER: Let's hold the questions until
24 the presentation is complete.

25 SUPERVISING ENGINEER PORBAHA: Okay. I'm

1 answering your question now. This is the original
2 as-built, prepared by the U.S. Army Corps of Engineers
3 dated March 1952. The data which we have is related to
4 levee -- it attempts to -- river mile at the top is the
5 river mile 65.2. And in the bottom one is the river mile
6 63.74. And the respondent's property is located at a
7 proximately river mile 64.2.

8 If you look at the top one, the slope in the
9 waterside, which is in the right side, is 4.5 horizontal
10 to 1 vertical. And the bottom one shows 4 to 1. So this
11 was initially what was initially constructed. So the
12 assumption of 3 to 1 is based on the minimum slope that a
13 waterside can have.

14 Did I answer the question?

15 Okay, continuing with the presentation. We can
16 see Section CC and Section DD in this slide here. Section
17 CC is the one -- these sections derive the same method as
18 the BB. And the top one shows the location in which the
19 cut was made and the boat carrier is located. And the
20 bottom part is Section DD in which the unauthorized fill
21 material was placed.

22 Now, we focus on Item 2 in terms of uncontrolled
23 fill material for construction of secondary driveway. The
24 Garden Highway is in the -- as shown here is perpendicular
25 to this fill. And the uncontrolled material, when we say

1 uncontrolled material, it means in terms of both the size
2 of the particle in terms of the placement, in terms of the
3 energy effort to compact the material, and in terms of
4 that region, that does not fit into the cuts.

5 So what the violation just happened is base on
6 California Code of Regulations, Title 23, Section 115
7 subsection (a), quote, "Dredged, soil or waste materials,
8 regardless of their composition, may not be deposited on
9 the levee crown, levee slopes, or within the limits of a
10 project floodway without specific prior approval of the
11 Board".

12 California Code of Regulations, Title 23, Section
13 116(b)(6), quote, "Stockpiles of materials or the storage
14 of equipment, unless securely anchored...and floatable
15 material of any kind are not allowed within a floodway
16 during the flood season..."

17 As you can see here, there are construction
18 debris and concrete which are in the fill.

19 Also, we have California Code of Regulations,
20 Title 23, Section 130(c)(1), quote, "Access ramps must be
21 constructed of approved imported material".

22 This is another view of the fill material. The
23 person who took this picture was standing almost on the
24 Garden Highway and the Sacramento River is at the end of
25 the picture. These are the placement of uncontrolled fill

1 material on the first -- or the first visit by the Board
2 staff on March 9, 2010. The fill was not complete.

3 In violation of California Code of Regulations,
4 Title 23, Section 130(c)(C), quote, "Any excavation made
5 in a levee section to key the ramp to the levee must be
6 back filled in four to six inch layers with approved
7 material and compacted to a relative compaction of not
8 less than 90 percent...and above optimum moisture
9 content". As you can see here, the material fill here has
10 been just dumped into the side.

11 In violation of California Code of Regulations,
12 Title 23, section 133(a), quote, "The owner or permittee
13 must maintain the waterward slope of the levee...in the
14 manner required by Reclamation District 1000..."

15 This is another view of the same encroachment
16 uncontrolled fill, which Garden Highway is in the left
17 side of the screen. This was an initial fill, which has
18 been dumped in March 9, 2010. The fill continued when we
19 saw it in the next field visit.

20 Now, we focus on the third category of
21 encroachments, that contains a Conex containers, as you
22 can see in your left side, is the boxes, two Conex boxes.
23 Just to mention that behind these Conex boxes is the
24 Garden Highway and behind the person who took this picture
25 is Sacramento River. We are looking toward the east.

1 So the Conex boxes and metal roof at the top and
2 also boat carrier with miscellaneous items at the top.
3 This picture was taken on March 9, 2010.

4 Another view of the same encroachments, you can
5 see the uncontrolled fill in the right side. But the
6 Conex containers roof and boat in the left side.

7 In violation of California Code of Regulations,
8 Title 23, Section 137(i), quote, "The storage of materials
9 or equipment, unless securely anchored...and floatable
10 material of any kind are not allowed within the floodway
11 during the flood season".

12 California Code of Regulations, Title 23, Section
13 133(a), quote, "The owner or permittee must maintain the
14 waterward slope of the levee in the manner required by
15 Reclamation District 1000".

16 This is another view of the metal roof with grass
17 placed above the Conex box. The person who took this
18 picture was standing exactly on the Garden Highway. And
19 the one which you see this container is here is the extra
20 fill that has been put on the levee. The main issue to
21 show this here, is that any inspector that passes through
22 this route, is unable to see those Conex containers, which
23 has been behind -- which is under these metal roof and
24 this grasses, were the things that this the plain ground
25 with grass.

1 So that is another view of the same encroachment.
2 This is another view of the metal roof, and Conex box on
3 the left and the cut into the levee in the right side.

4 Now, the applicant has applied for four permits
5 and one application, which was administratively closed.
6 The permits include permit number 12242-A GM issued on
7 March 29, 1979. Based on the permit, it was granted
8 variance for pump station manhole and conduit through
9 levee.

10 The second permit is number 13366 GM issued on
11 February 8, 1982, which authorized relocation of existing
12 dwelling from different location on Garden Highway to the
13 current location at 2817 Garden Highway.

14 One of the special conditions of this permit,
15 item number 20 -- Condition number Twenty-Three says that
16 no further construction or landscaping, other than that
17 covered by this application, shall be done in the area
18 without the prior approval of the Reclamation Board.

19 Application number 14509 that was administrative
20 Lee closed on February 4, 1987. Application closed due to
21 the U.S. Army Corps of Engineers not processing this
22 application until existing sunken vessel removed from
23 Sacramento River. Respondent requested to authorization
24 to construct boat dock, tide walls, steps on waterside and
25 installation of a parallel chain link fence on waterside

1 levee shoulder.

2 The other permit is number 16232 GM issued on
3 October 19th, '94. It authorized construction of boat
4 dock on the left bank of the Sacramento River. One of the
5 special condition of that Condition number Thirteen says
6 quote, "All work approved by this permit shall be in
7 accordance with the submitted drawings and the
8 specifications, except as modified by the special permit
9 here in. No further work, other than that approved by
10 this permit shall be done in the area without the prior
11 approval of the reclamation."

12 And finally, the permit number 16547 GM issued on
13 July 9, 1996 authorized construction of iron fence with
14 masonry columns on waterway slope. The main reason for
15 setting all this permits here is to mention that the
16 respondent was fully aware that for any encroachment he
17 needs a permit.

18 We have comments from two agencies one from a
19 letter from U.S. Army Corps of Engineers letter to the
20 Board, dated 3rd, 2010, which is included in the staff
21 report Attachment B, Exhibit D states that the U.S. Army
22 Corps of Engineers supports Board staff's Enforcement
23 Action citing that this encroachment quote, "Impacts the
24 structural stability of the levee". This encroachment,
25 quote, "Could prevent the system from performing as

1 intended during the next flood event."

2 And the request that this deficiency be corrected
3 prior to this flood season which is November 1st, 2010.
4 They also mentioned that the failure to address this
5 deficiency will remove the Natomas Basin system from PL
6 84-99 rehabilitation assistance.

7 Specific agency comments, comments from the
8 president of the Reclamation District 1000 to the
9 Board -- dated September 20th, 2010, which is included in
10 a staff report, Attachment B, Exhibit E. It says that the
11 Reclamation District 1000 also supports Board staff's
12 enforcement action and urges Board to continue with
13 Enforcement Action to prevent the district from losing PL
14 84-99 eligibility.

15 This slide shows the results of the analysis of
16 the inspection report -- inspection which was done by U.S.
17 Army Corps of Engineers in January 2010. This is some
18 kind of rating report for Reclamation District 1000. This
19 one is included in the staff report.

20 As you can see, the first -- the properties look
21 at it in Unit 1 Sacramento River, so it's referring to the
22 first column -- first column -- I mean, the second column,
23 which is Unit 1, Sacramento River. As you can see here,
24 this is the only unit in which the encroachments was
25 categorized as U, which you look at the legend in the

1 bottom, U is unacceptable. And if you read the bottom
2 part, it means likely prevents performance in next flood
3 event based on the framework.

4 Also, in terms of bank caving, this is
5 categorized as U, unacceptable. The representative from
6 the U.S. Army Corps of Engineers who is here. He'll be
7 able to elaborate more on this rating.

8 I would like to discuss the issue of public
9 safety and flood risk associated with these encroachments.
10 These encroachment undermines the current improvements on
11 the Natomas Basin Early Implementation Program project,
12 which a approximately costs about \$600 million.

13 And about 100,000 residents live in this Natomas
14 Basin will be affected. And the critical infrastructure,
15 such as the Sacramento International Airport and Arco
16 Arena will be impacted.

17 Failure to address this structural deficiency
18 will remove the Natomas system from PL 84-99
19 rehabilitation assistance. As we understand from the U.S.
20 Army Corps of Engineers, if one segment doesn't work, the
21 whole system in the loop does not work. I have a map here
22 from prepared by DWR, the demonstration map for American
23 River and potential flood depth.

24 Let's look at the legend of this and to see
25 what's the meaning of these colors. The legend in the

1 bottom left side says that the light blue is 0 to 5 feet,
2 dark blue is the depth of inundation of 5 to 10 feet. The
3 pink is 10 to 15 feet and the red one is 15 to 20 feet.

4 If you look at the property here, is located in
5 the bend in the left side. Slightly below the bend, you
6 look at the property, and we can see the impact
7 of -- breach on the hole Natomas area. This is based on
8 the existing published information by DWR.

9 PRESIDENT CARTER: Mr. Porbaha, could you point
10 to where the point is on that map --

11 SUPERVISING ENGINEER PORBAHA: Sure.

12 PRESIDENT CARTER: -- with the pointer.

13 SUPERVISING ENGINEER PORBAHA: I will. This is
14 the property located here, below the bend.

15 PRESIDENT CARTER: Thank you.

16 SUPERVISING ENGINEER PORBAHA: Regarding CEQA
17 analysis, Board staff has prepared the following CEQA
18 determinations. The Board acting tags CEQA lead agency
19 has determined the project is categorically exempt in
20 accordance with CEQA guidelines section 15321 under Class
21 21(a), actions of regulatory agencies to enforce standards
22 and Section 15301 under Class 1 covering the minor
23 alteration of existing public or private structures and
24 facilities.

25 Staff recommendations is as follows. These

1 determinations constitute as significant evidence that
2 said encroachments will interfere with maintenance and
3 performance of the Sacramento River Flood Control Project
4 pursuant to Water Code Section 8708 and Section 8709.

5 The State is obliged to enforce removal of
6 encroachments that impact the integrity of the levee
7 pursuant to Water Code Section 8708. The Board determined
8 that the encroachment removal is exempt from CEQA to adopt
9 the Enforcement Action number 2010-49, and to order
10 removal of unauthorized encroachments and restoration of
11 slope in accordance with Enforcement Action number
12 2010-49.

13 This is the end of my presentation. I'm either
14 available for your questions or I can ask two other
15 agencies who support this application.

16 PRESIDENT CARTER: Why don't you invite the other
17 two agencies up to testify.

18 SUPERVISING ENGINEER PORBAHA: Yes. Please the
19 first from the U.S. Army Corps of Engineers Ms. Meegan
20 Nagy, the chief of the floodway protection.

21 MS. NAGY: Good morning, President Carter,
22 members of the Board. My name is Meegan Nagy. I'm the
23 chief of the flood protection and navigation section for
24 the Sacramento District Army Corps of Engineers.

25 The Sacramento District strongly supports the

1 staff's recommendations as you've heard today. The Corps
2 conducted a periodic inspection on this levee system this
3 winter. And we determined that the encroachment that you
4 saw today is likely to prevent the system from performing
5 as intended during the next flood event. That is a
6 significant concern to us, especially in a place such as
7 Natomas.

8 The Sacramento District finalized the RD 1000
9 Natomas periodic inspection report on September 14th of
10 this year. We fully expected the Board and the local
11 maintaining agency will take actions to remedy all
12 deficiencies noted in the inspection report. However, the
13 District felt that the waterside levee cut to be a
14 significant enough concern to require separate
15 notification to the Board, so actions to correct the
16 deficiency could be taken immediately.

17 The locals and the State have spent a significant
18 amount of money in the Natomas Basin on levee
19 improvements. A levee is only as strong as its weakest
20 link. Encroachment such as this, weaken the system and
21 put more than 80,000 people at risk, and billions of
22 dollars in economic damages at risk.

23 We should not accept any encroachment which
24 diminishes our minimum standards. Natomas is a very deep
25 and dangerous floodplain and actions such as we've seen

1 today pose an unacceptable risk to the residents and the
2 rest of the city of Sacramento.

3 I'll be here later if you have any questions.
4 I'll hand it off to Paul.

5 PRESIDENT CARTER: Thank you.

6 MR. DEVEREUX: Morning, President Carter, members
7 of the Board. I'm Paul Devereux. I'm the general manager
8 for Reclamation District 1000. And I've been a local
9 maintaining agency manager for 10 years at American River
10 and now with Reclamation District 1000 dealing with
11 encroachments and trying to get property owners to comply
12 with Title 23. I'd sent out countless little of trying
13 to, you know, enforce and get people to comply with your
14 regulations, quite honestly not with a lot of success.

15 I'm very happy to see this action moving forward
16 and coming to your board. And I would just urge in
17 support of getting the levee slope repaired there. You
18 know, we know that this levee is made out of sand. You
19 know, we've cut into the levee. When we had to do
20 emergency repairs up at Prichard Lake. We've done
21 borings. We know it's made out of sand. And at some
22 point in time, you're going the cut through the veneer
23 that's on the outside and you're going to have the sand
24 exposed.

25 Now, through the years, we've dealt with seepage,

1 we've dealt with boils, we've dealt with erosion. And so
2 in the midst of investing anywhere from 700 million to a
3 billion dollars into these levees. But the bottom line is
4 it's protecting 80,000 people at least, and you know,
5 we're billions in property damage.

6 So in my opinion, we need the get this levee
7 slope restored. You know, irrespective of the things that
8 the Army Corps has brought forward and it is been
9 identified as a deficiency that flex both on our district
10 as well as on you, that we have an unacceptable rating,
11 but the bottom line is the public safety issue. And in my
12 opinion, you know, we need to get this levee restored so
13 that we feel safe going into this flood season or
14 certainly be in a position to do a flood fight if we have
15 to, but get the levee restored as soon as we can.

16 Thank you.

17 PRESIDENT CARTER: Thank you.

18 Does staff wish to present any additional
19 evidence at this point?

20 SUPERVISING ENGINEER PORBAHA: Ali Porbaha. Not
21 at this point.

22 PRESIDENT CARTER: Thank you.

23 So now we'll hear from the respondent.

24 VICE-PRESIDENT RIE: President Carter, when can
25 we ask questions of staff?

1 PRESIDENT CARTER: After we hear from the
2 respondent.

3 VICE-PRESIDENT RIE: Okay.

4 MR. KNOX: I'm Tom Knox. I'm counsel for Mr. And
5 Mrs. Sieglitz, both of whom are with me. Mr. Sieglitz is
6 seated to my left. This is Mrs. Sieglitz sitting in the
7 second row.

8 I've prepared some questions and answers for Mr.
9 Sieglitz followed by some remarks by me. We have
10 submitted a written letter to you together with exhibits.
11 The purpose of Mr. Sieglitz's testimony is simply to
12 state -- make clear the facts asserted in the brief, and
13 then I'll follow-up with the discussion of the legal
14 issues, if that's all right with the Board.

15 PRESIDENT CARTER: That's fine. Please proceed.

16 MR. KNOX: All right. I don't need the laptop
17 here. I presume Mr. Sieglitz needs to stand next to the
18 microphone in order to have his --

19 PRESIDENT CARTER: Yes.

20 MR. KNOX: All right. We'll share the podium, as
21 if we were distributing the Oscars here.

22 MR. SIEGLITZ: Good morning, Chairman Carter, and
23 the Board members. I'm Bob Sieglitz.

24 PRESIDENT CARTER: Good morning. Welcome.

25 MR. SIEGLITZ: Thank you.

1 MR. KNOX: Mr. Sieglitz, would you tell us what
2 your -- something of your educational and professional
3 background please?

4 MR. SIEGLITZ: I'm licensed professional
5 engineer, civil engineer. I've worked in that field since
6 1975 or thereabouts.

7 MR. KNOX: When did you buy the -- when did you
8 acquire the Garden Highway property?

9 MR. SIEGLITZ: About 1978.

10 MR. KNOX: All right. And does it sit below the
11 grade of the Garden Highway?

12 MR. SIEGLITZ: That's correct.

13 MR. KNOX: And did you move a house onto the
14 property where you now live?

15 MR. SIEGLITZ: Yes.

16 MR. KNOX: All right. And when was that?

17 MR. SIEGLITZ: About 1982.

18 MR. KNOX: Okay, and is there a slope from the
19 Garden Highway down onto your property?

20 MR. SIEGLITZ: That is correct.

21 MR. KNOX: Now, in 1992, did you move two Conex
22 boxes onto the property?

23 MR. SIEGLITZ: That's correct.

24 MR. KNOX: Would you describe the boxes please?

25 MR. SIEGLITZ: The boxes are Conex boxes, which

1 are transportable shipping containers. They're
2 approximately 8 feet wide, a little over 8 feet tall and
3 about 40 feet long.

4 MR. KNOX: To place the boxes where they now
5 stand, did you excavate the slope?

6 MR. SIEGLITZ: Not at all.

7 MR. KNOX: How are they supported?

8 MR. SIEGLITZ: Within an existing driveway, we
9 put a curb at each end and then set them on the curb and
10 support them off the curb.

11 MR. KNOX: Did you do any digging at all into the
12 toe of the slope in order the situation the Conex boxes
13 where they now stand?

14 MR. SIEGLITZ: No, we did not.

15 MR. KNOX: Now, after the boxes were installed,
16 without cutting the slope, did you dig a passage way
17 between the slope and the boxes?

18 MR. SIEGLITZ: Yes, the site near the levee was
19 rough consisting of stone and broken concrete, and dirt,
20 and we wanted the walkway on the levee side of the boxes
21 in order to hang garden tools. So we created a walkway
22 back there, built it up, in some cases using sandbags, and
23 kind of excavated -- you saw what the photos looked like.
24 So we just by hand took off and cut out fairly vertically
25 the fill that was right adjacent to those boxes.

1 MR. KNOX: Now, you said fill. Did you dig into
2 the levee?

3 MR. SIEGLITZ: No it was on -- it was just
4 shearing off fill that was placed against it on the levee.

5 MR. KNOX: All right. You heard the
6 representative from RD 1000 refer to the levee as sand.
7 Is that consistent with your understanding as well?

8 MR. SIEGLITZ: That's correct. And it's --

9 MR. KNOX: Go ahead.

10 MR. SIEGLITZ: And it's obvious just looking at
11 the photographs that the excavated portion cannot
12 be -- cannot be sand or it wouldn't stand vertically as
13 the photos show.

14 MR. KNOX: Did you dig through any sand?

15 MR. SIEGLITZ: No I did not.

16 MR. KNOX: What was the material through which
17 you dug?

18 MR. SIEGLITZ: It was broken concrete and brick
19 and clay and loam materials that had kind of turned to
20 caliche or adobe alongside of the containers.

21 MR. KNOX: Was there a 3 to 1 grade before you
22 began digging?

23 MR. SIEGLITZ: No, there wasn't.

24 MR. KNOX: Was it steeper or more slack?

25 MR. SIEGLITZ: It was steeper.

1 MR. KNOX: Have you examined other properties
2 along the Garden Highway to determine whether other
3 properties have the 3 to 1 grade?

4 MR. SIEGLITZ: Yes, since this action, my wife
5 and I, just driving towards town, said well let's see if
6 we can identify parts of the levee that appear to be
7 original without fill or dumping next to it. And we
8 measured slopes on those --

9 MR. KNOX: And have you taken photographs of some
10 of those measurements?

11 MR. SIEGLITZ: That's correct.

12 MR. KNOX: All right. Those are included in my
13 letter brief to you at Exhibit B. Mr. Sieglitz, do you
14 have Exhibit B to our letter brief. Would you just walk
15 us through those photographs and tell us what they show
16 and where the pictures were taken.

17 MR. SIEGLITZ: My wife took the photographs, so
18 I'll have to read. Approximately the 2100 block of Garden
19 Highway is A. And that is located -- Highway 80 has an
20 overpass at about that location. So that's underneath the
21 freeway. There's no offramp at that Highway 80 overpass.

22 B is a sand cove that used to be known as ski
23 beach. It's a public access area. This is beyond -- or
24 this is north of the parking lot that has basically a
25 natural slope coming off of the levee.

1 C, there's a marina located just up from Orchard
2 Road, which is dead ends into Garden Highway, where
3 Swallows Nest Golf Course and development is. And just up
4 river from that is a marina. This is part of the
5 undeveloped portion of that marina, and this was taken
6 here.

7 D is actually an improved area. And we thought
8 well we ought to see what the slopes are that were
9 required in an improved area. And D is taken where
10 Chevy's restaurant is located along that path there down
11 to their parking lot. And we just decided well let's see
12 if those are 3 to 1 on the new levees.

13 MR. KNOX: Did you have to look hard to look a
14 long time to find these two -- the areas that you
15 photographed?

16 MR. SIEGLITZ: No. We were just driving towards
17 town and I said well let's take a couple of yard sticks
18 and find out what the slopes were. So we took a couple of
19 yard sticks, a right angle square and a level, so we could
20 demonstrate we were level at right angles when we were
21 taking the measurement. And the yardstick was obviously 3
22 feet long, so that gives us 3. If it were a 3 to 1 slope,
23 it would be 3 vertically to 12 -- or 1 foot -- excuse me 1
24 foot vertically to 3 foot horizontally.

25 And all of the photographs and all of the

1 locations we had were much greater than that, in fact,
2 exceeded 2 to 1.

3 MR. KNOX: Are there parts of the slopes on your
4 own property where you've not done any digging at all
5 which are steeper than 3 to 1?

6 MR. SIEGLITZ: That's correct.

7 MR. KNOX: And are those shown in any of the
8 photographs in the staff report?

9 MR. SIEGLITZ: Yes. Immediately south of the
10 Conex boxes, no excavation was done, no work was done, and
11 those slopes are pretty vertical, because they were just
12 due to fill that had been then dumped on the highway
13 sometime in the past.

14 MR. KNOX: And that would be at Figure 2C of the
15 staff report.

16 Did you install an elevated walkway roof
17 stretching from the fill of the slope across the Conex
18 boxes?

19 MR. SIEGLITZ: That's correct. We put a concrete
20 curb on top of the fill and laid that roof on top of
21 the -- where that walkway on top of the concrete curb, and
22 cuss spends over to the Conex boxes.

23 MR. KNOX: And what was the purpose of that?

24 MR. SIEGLITZ: The purpose is basically a walkway
25 and access place and to protect the Conex boxes, also to

1 protect the tools on the -- that are underneath it.

2 MR. KNOX: Are the Conex boxes visible from the
3 Garden Highway?

4 MR. SIEGLITZ: That's correct.

5 MR. KNOX: Easily visible or due to have work at
6 it?

7 MR. SIEGLITZ: Oh, no. You can see them. In
8 fact, some of the photographs shown are just taken from
9 Garden Highway, so can you see all the -- see the Conex
10 boxes very clearly.

11 MR. KNOX: And when did you install this walkway
12 roof?

13 MR. SIEGLITZ: Immediately after installing --
14 putting the Conex boxes in.

15 MR. KNOX: In 1992?

16 MR. SIEGLITZ: That's correct.

17 MR. KNOX: Do you have a boat trailer still
18 parked against the slope?

19 MR. SIEGLITZ: I have a couple of boat trailers
20 and other trailers parked against the slope just south of
21 the Conex boxes.

22 MR. KNOX: All vehicles of one sort or another?

23 MR. SIEGLITZ: They're all
24 rollable -- rollable -- yes they're trailers.

25 MR. KNOX: They're mobile?

1 MR. SIEGLITZ: They're mobile, right.

2 MR. KNOX: They're not disabled?

3 MR. SIEGLITZ: That's correct.

4 MR. KNOX: Did you dig into the slope in order to
5 accommodate the parking of those vehicles?

6 MR. SIEGLITZ: No.

7 MR. KNOX: Now, you were -- you have begun
8 construction of a driveway on the Garden Highway?

9 MR. SIEGLITZ: That's correct.

10 MR. KNOX: From the Garden Highway onto your
11 property?

12 MR. SIEGLITZ: That's correct.

13 MR. KNOX: Located where?

14 MR. SIEGLITZ: At the south end of the property
15 adjacent to the property line, the southern property line.

16 MR. KNOX: And you've not applied for a permit
17 for that?

18 MR. SIEGLITZ: That's correct.

19 MR. KNOX: Did you dig into the slope of the
20 levee in order to build that driveway?

21 MR. SIEGLITZ: No, we did not.

22 MR. KNOX: How have you constructed the driveway?

23 MR. SIEGLITZ: Well, we placed broken concrete,
24 stone and dirt at the base on the existing driveway, which
25 came from the neighbor's property. And then once that was

1 built up sufficiently, then we placed additional rubble
2 and dirt, et cetera, from the top, from Garden Highway
3 side to tie it in.

4 MR. KNOX: And have you built over the levee or
5 through it?

6 MR. SIEGLITZ: Everything's been done on top of
7 the fill which is on top of the levee.

8 MR. KNOX: And what is the fill consist of?

9 MR. SIEGLITZ: The fill that we placed or the
10 fill that was there already?

11 MR. KNOX: The fill that you placed.

12 MR. SIEGLITZ: The fill that we replaced consists
13 of broken concrete, stone and dirt. There as some gravel
14 in it.

15 MR. KNOX: All right. Is that consistent with
16 the type of fill that you have used in the past pursuant
17 to permits with the Army Corps and with RD 1000?

18 MR. SIEGLITZ: And with Reclamation Board, yes.

19 MR. KNOX: You have seen Attachment E to the
20 staff report, have you not?

21 MR. SIEGLITZ: Refer to me what that is.

22 MR. KNOX: For the Board's information, that was
23 the drawing that the Board representative showed with the
24 red line, the red cross-hatching that purported to show
25 that the slope at a 3 to 1 grade extended underneath the

1 two Conex boxes, and -- concerning which I believe one of
2 the Board members actually asked a question.

3 It's Section BB if you have your staff report in
4 front of you. And it's -- you have Exhibit E in front of
5 you?

6 MR. SIEGLITZ: Yes, I have that in front of me.

7 MR. KNOX: Do you believe that to be an accurate
8 depiction of the situation?

9 MR. SIEGLITZ: No.

10 MR. KNOX: Okay, and why is that?

11 MR. SIEGLITZ: Well, it seems that somebody used
12 a little bit of artistic license. They decided
13 to -- whereas all surveys and all records, including the
14 survey it came from up above, and other surveys, including
15 the subdivision map, shows that the center line of Garden
16 Highway is coterminous with the center line of the levee,
17 that shows that they offset it

18 Number 2, it shows -- so that moved it 5 feet
19 closer to our property.

20 It shows that the property -- the existing
21 property was 1 to 3 slope, which it never was at that.

22 Number 3, it shows that the crown width is 30
23 foot on -- you've got that document here -- on this
24 document produced by the Corps of Engineers --

25 MR. KNOX: Which we have distributed along with

1 our letter brief.

2 MR. SIEGLITZ: -- and this is a 300 page
3 document. There's just a couple of sheets which show that
4 the top of the levee width for by design is 20 foot wide
5 rather than 30 foot wide. So they use some license to
6 expand that, which all of those tend to say they're
7 pushing the levee slope onto our property compared to
8 where it was.

9 MR. KNOX: The document that those the 20-foot
10 crown is the -- titled -- it's from the Army Corps of
11 Engineers. It's titled Post Authorization Change Report
12 and Interim Reevaluation Report dated July of 2010.

13 I think that's all we have by way of Mr.
14 Sieglitz's testimony. If any of you have any questions,
15 of course, we'd be responsive.

16 PRESIDENT CARTER: Do you have any other
17 witnesses you'd like to bring before the Board?

18 MR. KNOX: No other witnesses. I have some
19 comments to summarize the legal points made in my brief.

20 PRESIDENT CARTER: Okay. If you would go ahead
21 and make your summary comments please.

22 MR. KNOX: Sure.

23 SUPERVISING ENGINEER TARAS: Mr. President, this
24 is Mr. Taras, Chief of the Enforcement Branch. My counsel
25 is asking when the time is appropriate to take a break.

1 Our head counsel is doing some research and will return to
2 respond to any questions later.

3 PRESIDENT CARTER: We'll take a break after the
4 respondent has completed their testimony.

5 SUPERVISING ENGINEER TARAS: Okay, thank you sir.

6 MR. KNOX: As I say, we have made a number of
7 points in our brief. I hope you will review it carefully.
8 I intend only to summarize here but not to supplant the
9 analysis made there, which combines of course the facts
10 and is law.

11 Let me take up first the question of the Conex
12 boxes, the passage way that Mr. Sieglitz dug next to them
13 and the elevated walkway roof. We believe first of all,
14 that any action by the Board with regard to those is
15 precluded by Code of Civil Procedure section 315. It's a
16 code -- it's a Statute of Limitations and it bars any claims
17 such as this by the State with respect -- well with
18 respect to any claim like this, that is more than 10 years
19 old.

20 Mr. Sieglitz made the improvements. He discussed
21 in 1992 clearly the 10 year statute has in fact run. In
22 connection with those improvements, the Conex boxes, the
23 passage way, the walkway, the staff has cited 23 CCR
24 112(b), which prohibits excavation of the levee.

25 Mr. Sieglitz did not excavate the levee. The

1 levee as the representative from RD 1000 acknowledged, is
2 made of sand. He did cut into the fill, the clay soil and
3 loam mixed with chunks of brick and concrete, immediately
4 adjacent to those Conex boxes. That's the only place
5 where he cut into the slope at all, and that was fill not
6 levee.

7 And so that we're very clear, Mr. Sieglitz, as
8 he's testified, made no cut anywhere in order to situate
9 the Conex boxes. He put them in place first and then cut
10 back a slope that was in any event much steeper than a 3
11 to 1 grade, and was in any event not levee, but fill.

12 The claim that Mr. Sieglitz destroyed a 3 to 1
13 grade on the levee is simply untrue. As he has testified,
14 there are plenty of places along the Garden Highway and
15 his own property is one of them, where there is a grade
16 steeper than 3 to 1, and the notion that he is responsible
17 somehow for restoring the property to a grade that it
18 never had is simply unfair and ill-taken.

19 The second item, with respect to the boat
20 trailers, the staff claims that a boat trailer parked up
21 against the slope violates the law. Boat trailer
22 actually, it's vehicle. Trailers are all vehicles.
23 They're all mobile. No cuts were made in any slope fill
24 or levee to accommodate them. The vehicles can be parked
25 there to accommodate whatever the legitimate needs of the

1 district and its maintenance activities may be.

2 More over, nothing in the parking of vehicles
3 there would seem to interfere with the operation of the
4 right of way or the easement by the McClatchies who were
5 Mr. Sieglitz's long ago predecessors of interest. The
6 terms of the easement, from which all the legal rights
7 that the district may assert or RD 1000 may assert or the
8 Board may assert, all of those flow from the easement
9 which is a right of way for the purpose of building,
10 constructing, enlarging and maintaining the levee. The
11 vehicles parked there don't interfere with any of those.
12 And they can be moved in the event that there is some need
13 for temporary maintenance.

14 With respect to the driveway, Mr. Sieglitz has
15 acknowledged that he doesn't have a permit. He built the
16 driveway, however, over the levee not through it. He
17 didn't disturb the levee as it was built. He used
18 materials consistent with the permits he obtained back in
19 1978 from RD 1000 and the Army Corps of Engineers. We
20 acknowledge that those have expired, but the materials are
21 exactly the same. He's certainly willing to apply for a
22 permit, which I believe under the circumstances and based
23 on the analysis we put in our letter brief, the Board
24 would be obliged the grant.

25 That's all I have by way of legal argument. As I

1 say, that is a summary of the points made in my brief,
2 which I do ask you to read. I thank you for the courtesy
3 in listening and your attention to this very important
4 matter, a matter that affects the Sieglitz's very directly
5 obviously.

6 PRESIDENT CARTER: Thank you very much.

7 Ladies and gentlemen, let's take a 10 minute
8 recess, and then we will reconvene.

9 (Thereupon a recess was taken.)

10 PRESIDENT CARTER: Ladies and gentlemen, if I
11 could ask you to take your seats, we'll go ahead and
12 continue with our hearing.

13 We have heard both from staff and the respondent.
14 I'd like to give an opportunity to the -- any members of
15 the public that wish to speak in support or opposition to
16 the action before us today.

17 Then we will allow staff to rebut the testimony
18 of the respondent and in turn allow the respondent to
19 rebut the staff's rebuttal. So that's the process. And
20 then we will open it up for questions for the Board. And
21 at that time the Board can ask questions of anyone who
22 has -- from staff or the respondent who have testified
23 today.

24 So with that, staff are you prepared to give a
25 rebuttal?

1 SUPERVISING ENGINEER PORBAHA: Yes. Our response
2 to the comments by the respondent and respondent's
3 representative are categorized into two legal aspects of
4 that and technical aspects of that.

5 First, in terms of legal aspect.

6 DWR STAFF COUNSEL BREWER: Okay, first I would
7 like to -- Robin Brewer, counsel for the Board. Staff
8 counsel for DWR.

9 First, I would like to respond to the
10 respondent's argument that the California Code of Civil
11 Procedure Section 315 somehow has a Statute of Limitations
12 of 10 years. We contend that that does not apply here,
13 because the application of Section 315 would somehow give
14 a property right to evade the Board's jurisdiction under
15 adverse possession theories.

16 Here, and if you closely read Section 315 it
17 talks about when the people will not sue. Here, this case
18 is not being brought to sue for property rights, but
19 rather under the Water Code and under Title 23.

20 Further, Civil Code Section 1007 would exempt any
21 applicability of CCP Section 315.

22 Number 2, even if you were somehow able to find
23 that CCP Section 315 applied here and there was a 10-year
24 Statute of Limitations. A Statute of Limitations does not
25 begin to run until you know or reasonably should have

1 known that the subject of the statute existed. So here
2 what we're talking about is the Conex containers and the
3 metal roof.

4 In this case, you have heard or can hear
5 testimony from both Meegan from the Corps of Engineers,
6 and Paul from RD 1000 that the first time anyone knew or
7 could see these camouflaged Conex boxes was 2008. So
8 we're in 2010, that's two years at most. But I think the
9 most important thing to note is that clearly CCP Section
10 315 does not apply here at all.

11 Thank you.

12 SUPERVISING ENGINEER PORBAHA: Ali Porbaha of the
13 of the staff. I would like to address several issues that
14 was mentioned by either Mr. -- by the respondent or by
15 the respondent's representative.

16 The first one is the figure attachment shown here
17 prepared by Wood Rogers. It doesn't have number. They
18 call it Figure 8. This one shows an existing levee of
19 minimum 20 for crown widths of a typical section.

20 PRESIDENT CARTER: Could you, Mr. Porbaha,
21 perhaps put it on the projector, so that everyone can see
22 that.

23 SUPERVISING ENGINEER PORBAHA: I wish I could,
24 but Unfortunately this is out of service.

25 PRESIDENT CARTER: The projector is broken?

1 SUPERVISING ENGINEER PORBAHA: Yes.

2 PRESIDENT CARTER: Okay. This was in the

3 SUPERVISING ENGINEER PORBAHA: The Board -- this
4 was distributed by the respondent's representative this
5 morning. This is one of the attachments here. It says
6 the title is the American River watershed common features
7 project Natomas Post Authorization Chart, Figure 8.

8 PRESIDENT CARTER: Typical fix in place no raise.

9 SUPERVISING ENGINEER PORBAHA: Yes. This is the
10 typical cross section from a -- I don't know how many
11 miles is really the American River. Just typical section
12 here.

13 What we have here --

14 BOARD MEMBER BROWN: Well, wait a minute. Where
15 is it?

16 PRESIDENT CARTER: John, it's in that -- there we
17 go.

18 Is everybody on the same page here?

19 SUPERVISING ENGINEER PORBAHA: Okay, this is a
20 typical cross section. We don't disagree with that. This
21 is a typical cross section in which the minimum width is
22 20. However, what we have from actual as-builts of the
23 site is that the -- shows that the two attestations that
24 we have, one before and one after the property, one is
25 river mile of 65.21 and the other one is 63.71. If you

1 see the average of this would be 64.2, which is the exact
2 approximate location of the property should be within the
3 slope of -- within the width -- within the crown width of
4 these two limits.

5 So the first one shows the width is 30.03 feet.
6 And almost the second one shows the same one. So this is
7 the actual as built of the site that we have data. It is
8 not atypical cross section. Yeah, there are some areas
9 that is 20 feet minimum, and as mentioned here. But this
10 is not the actual condition on the site. That is number
11 one.

12 SUPERVISING ENGINEER TARAS: This is Curt Taras
13 Chief of Enforcement Branch. Board staff would also like
14 to point out that's for the American River, that exhibit.
15 The violation location is on the Sacramento River. So the
16 applicability of that cross section of this discussion is
17 not clear.

18 Thank you.

19 VICE-PRESIDENT RIE: So that -- those as-builts
20 are for the American River not the Sacramento River?

21 SUPERVISING ENGINEER PORBAHA: The one which was
22 presented by the respondent representative, as I say, he
23 is American River watershed common features. I don't
24 know where it comes from. This is atypical -- yeah this
25 is 20 feet. Minimum is typical. But it doesn't apply to

1 the location of the property.

2 PRESIDENT CARTER: The drawing on that Figure 8
3 presented by the respondent says it applies to the Natomas
4 Basin, which is the Sacramento River as part of the
5 Natomas Basin.

6 SUPERVISING ENGINEER PORBAHA: The second issue I
7 would like to discuss with that is on the report presented
8 today by the respondent's representative here. The first
9 paragraph in the background, it says, "In 1992, they moved
10 on two Conex boxes into the property". That's what they
11 stated and mentioned here.

12 This is the plan view of the application for
13 permit that they submitted in 1994. And they excluded the
14 location of -- they excluded the Conex boxes in this
15 figure. So the reason that the 1992 was over there,
16 either they didn't want to show it, they missed it or the
17 issue that this was there in 1992 is inaccurate.

18 Number 3 --

19 BOARD MEMBER BROWN: So you're saying they were
20 removed it in 1994?

21 SUPERVISING ENGINEER PORBAHA: I don't know when
22 they removed it. I just say the document that the
23 respondent submitted to the Board in 1994, there is no
24 indication of Conex boxes in the property.

25 PRESIDENT CARTER: And the 1994 document was for

1 their permit --

2 SUPERVISING ENGINEER PORBAHA: Correct.

3 PRESIDENT CARTER: -- to build the boat dock --

4 SUPERVISING ENGINEER PORBAHA: Permit number

5 18 -- 16232, issued in October 19th, 1994.

6 PRESIDENT CARTER: Which was for a boat dock?

7 SUPERVISING ENGINEER PORBAHA: Correct.

8 BOARD MEMBER BROWN: Did that permit include the
9 boxes?

10 SUPERVISING ENGINEER PORBAHA: Never requested
11 for boxes -- the permit for boxes. The box is
12 unpermitted.

13 BOARD MEMBER BROWN: Okay.

14 SUPERVISING ENGINEER PORBAHA: All encroachments
15 here are unpermitted.

16 So this is number 2.

17 Number 3, the claim that material that they used
18 for fill is consistent with the permits that they have is
19 inaccurate, because the Board or any organization when
20 they want to have the fill, the size of the particle
21 should be less than three inches.

22 As we saw from many pictures from the
23 presentation, they use rubble and construction debris to
24 build this fill material. So this statement that this
25 material is consistent with the any agency is inaccurate,

1 because there are construction waste material. It's not
2 appropriate for compacting, because the ordinary
3 compaction devices that we have, you cannot compact this
4 irregular materials.

5 Number 4, the respondent used the Board artistic
6 license to describe the work that is presented as the
7 actual cross-sections that was surveyed by Psomas
8 Engineers or Psomas survey. This was not done by the
9 Board staff here. This data was obtained from a third
10 party. This data is not prepared by the Board staff.
11 Addition of those Conex boxes -- addition of that 3 to 1
12 and putting those, you know, flood protection values.
13 These are the ones which is done by the Board. But this
14 data was not prepared by the Board staff. It was prepared
15 by the third party, which has nothing to do with this
16 case.

17 Number 5, the respondent claims that the data,
18 which I submitted previously, Section BB, the center line
19 doesn't show that center line of the levee is consistent
20 with the center line of Garden Highway. We put this
21 alternate Section BB to show that the center line of the
22 levee is coincide with center line of the Garden Highway.

23 As you can see from in data, the -- if you make
24 such an assumption again, a large portion of the levee toe
25 has been cut to put those Conex boxes over there. So this

1 is a modified version of the Section BB that I showed
2 earlier shows that in the previous one, which I showed, I
3 put the land side hinge as the source -- start source.
4 And from that point I draw 30 feet in order to get to the
5 hinge of the waterside. That was the first estimate that
6 we make.

7 This figure shows here, we start with the center
8 line of Garden Highway, make it consistent on the center
9 line of the levee, and then move 15 feet to the right
10 side, 15 feet in the left side based on the data from the
11 as-builts. And then we got the hinge point of the
12 waterside. And based on that we draw the line 3 to 1.

13 So if the claim of the respondent the true, this
14 shows significant cut into levee about 15.9
15 horizontal -- 15.9 feet horizontally cut into the levee
16 toe.

17 Number 6, they mentioned that the boat carrier is
18 mobile and can be removed anytime. But according to
19 regulations, even the mobile term needs to be removed
20 during the flood season from November 1st to April 15th,
21 which didn't happen.

22 And I'm referring to number 8 or -- 7 or 8.
23 Referring to the figure that was submitted by the
24 respondent or respondent's attorney, on page -- doesn't
25 have page number, but it's the first appendix, showing a

1 plan of the -- showing the plan of several points.

2 I'm referring to this figure. As I understand, I
3 have not read the report completely, they chose four
4 points. These four points are -- have two problems. One
5 is that it's statistically insignificant. In other words,
6 you cannot select four points at only one location, that's
7 very close to each other, and say this is the most
8 representative of the levee in that area. That's number
9 one.

10 Number 2, the point that was selected here are
11 biased, because they are all in the bent area in which the
12 erosion is the highest. While the property of the
13 respondent is located in a straight line in which the
14 erosion is minimum compared to the bent area. So this
15 point neither statistically nor -- neither statistically
16 nor from engineering viewpoint are representative of the
17 respondent's claim that because these few points have such
18 behaviors, the slopes are like that so it's typical of
19 what's in that area. This study is biased in two ways.

20 This is all I have at this moment. I'm ready for
21 any questions. Thank you.

22 PRESIDENT CARTER: All right. Does the
23 respondent wish to rebut staff's testimony

24 MR. KNOX: Staff had about 10 minutes to regroup
25 after hearing our presentation. Could I just have a few

1 minutes to sort out which of these issues I'll respond to
2 and which of these are procedural?

3 PRESIDENT CARTER: You both had 10 minutes to
4 review each other's testimony prior -- or during the
5 break. That's what staff responded to. Let's proceed.

6 MR. SIEGLITZ: All right. Hello again. I notes
7 right here and I'm not as organized as you folks.

8 It's interesting that Mr. Porbaha stated that
9 nobody noticed that the Conex boxes were in place until
10 2008. The requirements of the district, District 1000, as
11 well as The Reclamation Board, which this agency grew out
12 of, is that they make periodic inspections. And to state
13 that they didn't make any periodic inspections for 10
14 years is ludicrous.

15 In addition to that, we have a permit for a
16 fence, which was shown to you by the staff. And that
17 permit for this fence was done subsequent to the
18 installation of the boxes.

19 There's a curb that those -- that the roof of the
20 boxes sat on, which is inside the curb -- inside the
21 fences. It would not have been possible to put the curb
22 there at that time.

23 Just driving down the levee, can you see the
24 boxes. There is no -- I mean they're in plain view.
25 There's no intent to conceal them or anything else. So I

1 think it's ludicrous to say that nobody noticed them until
2 2008.

3 He showed then in item number 2 a plan that he
4 purports says that the boxes were not there. The boxes
5 are moveable boxes, as trailers and other things. And we
6 didn't show our trailers or our vehicles or other moveable
7 equipment. But the driveway very clearly shows going down
8 to those containers those containers were in place before
9 that driveway was constructed. So that's obvious they
10 were there.

11 In addition to that, that project was inspected
12 specifically in addition to the general inspections that
13 are required, was specifically inspected, and the
14 containers were there and of note and observed at that
15 time. And to say they weren't is not correct.

16 And number 3 -- I believe it's number 3 were that
17 there were no permits that were issued that allowed for
18 rubble. Now, I think staff's been selective in giving you
19 permits and showing you permits, but yes there is a
20 permit. We have a permit for bank fill and riprap that
21 was given in 1978, which specifically mentions the
22 concrete rubble et cetera. And this is the concrete
23 rubble that we are putting on the new driveway. So
24 there's selectivity I think indicates some prejudice, that
25 they don't want us to use the materials that have been

1 previously approved.

2 They indicate that the data that they had is from
3 a third party and that's on the screen now. It's
4 interesting that they had another drawing already prepared
5 which more accurately showed -- that coincided with the
6 independent Psomas drawings that showed the center line of
7 Garden Highway.

8 Now, of course, they wanted to submit originally
9 to the staff that the center line shifted, so that they
10 put it more on our property. But now we all of a sudden
11 see one that shows it has shifted.

12 Item number 6, part of the claim is that all
13 vehicles and trailers and automobiles cannot be parked in
14 the floodplain during long periods of the year. All
15 residents on Garden Highway park their vehicles in their
16 drive ways. In 99 percent of those cases, those driveways
17 are down on the land of the level, and they are not --
18 they don't chain them up. They park their vehicle and get
19 in and leave the next morning. They also have trailers
20 down there and other types of vehicles. And the idea that
21 you cannot park a vehicle on your property is again, I
22 think, not correct.

23 There was another item. Let's see if I can find
24 what it was.

25 Oh, the last item was that the photos we had

1 selected are biased. Absolutely, they're biased. We
2 drove down the river. We drove from our property and we
3 looked for properties that had not been filled in, that
4 had not been developed, that had not been changed from the
5 original. So no we did not want to pick ones that had
6 steep slopes, or retaining walls or vertical ones or
7 additional fill against the property.

8 We intentionally selected properties that were
9 in -- as close to the natural state when the levee was
10 built as possible. So definitely those are biased photos.

11 In addition, the -- there's the claim that
12 typical cross sections taken up river and down river of
13 our property are typical of our property. Typical in our
14 property is not typical up river and down river from our
15 property. Directly down river from our property, you
16 can -- if any member wanted the Board wants to look,
17 you'll find that the fill is considerably greater. The
18 fill on to the top of the fill on our property from the
19 center line of the property -- of Garden Highway is about
20 30 feet in. On the adjacent property, probably 40 or 50
21 feet in towards the river.

22 And in addition, the banks dropped vertically
23 off. There's lots of heavy broken concrete and other
24 things there.

25 During one of our permits, it's the permit that

1 we had for installing a sewer line through the levee, the
2 permit specifically in the inspection report and report
3 indicates that -- and that is on our property -- indicates
4 that there is a driveway along that area, which doesn't
5 obviously show in the exhibits that the staff purports to
6 be accurate of our property.

7 Are there any questions?

8 PRESIDENT CARTER: No. Do you have further
9 rebuttal?

10 MR. SIEGLITZ: That's basically just a response
11 to his individual items.

12 PRESIDENT CARTER: Thank you.

13 MR. SIEGLITZ: Thank you.

14 BOARD MEMBER BROWN: Mr. Chairman. I have a
15 question. I didn't quite understand his explanation on
16 the center line shift.

17 MR. SIEGLITZ: On the center line shift, if
18 you'll note the drawing that's on the screen right now,
19 that's not the drawing that they gave you in staff.
20 That's a drawing that they must have had prepared or they
21 drew really quickly during the break, that actually
22 shifted the center line in the drawing that you were given
23 and that they showed you earlier. The center line of the
24 highway is actually five feet or I don't know if it's 5.1
25 or 4.9 feet, shifted towards our property or towards the

1 river from this one.

2 This one agrees with other surveys that the
3 center line of the levee is coterminous with the center
4 line of Garden Highway.

5 PRESIDENT CARTER: Thank you.

6 MR. KNOX: I just want to address the question of
7 applicability of the Statute of Limitations. The language
8 of the statute is cited in the letter brief that I've sent
9 to you. I think it's very clear. The people of this
10 State will not sue any person or in respect to any real
11 property or the issues or profits there of, by reason of
12 the right or title of the people to the same unless such
13 right or title shall have accrued within 10 years before
14 any action or other proceeding for the same is commenced.

15 As Mr. Sieglitz testified, he installed those
16 Conex boxes, cut his pathway and installed the elevated
17 walkway roof in 1992. That is more than 10 years ago.
18 They have been on plain display. You can see all of this
19 if you simply are driving down the Garden Highway or
20 walking along. There's been no attempt to conceal or hide
21 it. The statute clearly applies.

22 Thanks.

23 PRESIDENT CARTER: Thank you. Any other
24 rebuttal?

25 MR. SIEGLITZ: Could I make a couple more

1 comments?

2 PRESIDENT CARTER: Yes, you may.

3 MR. SIEGLITZ: Thank you.

4 I think the things that we haven't discussed yet
5 and for whatever reason, is regarding the Title 23 and
6 what Title 23 actually authorizes.

7 Title 23 actually -- and this is speaking
8 specifically to the driveway. Title 23 actually
9 specifically allows driveways below, I believe. It's one
10 foot above the floodplain to be constructed. And it also
11 allows for no -- I think it specifically says that there
12 are no restrictions for improvements above that area. So
13 the driveway is -- falls under that.

14 Also, in, I think it's number 123(c)(4)
15 specifically allows for a raised walkway to be
16 constructed. And the roof of the canopy that's over the
17 top of the containers is in fact a raised walkway.
18 There's a door -- there's a gate that gets to it, et
19 cetera.

20 Thank you.

21 PRESIDENT CARTER: Thank you.

22 STAFF ENGINEER CALISO: Good morning Angeles
23 Caliso with Board staff. We'd like to make a
24 clarification on the cross section make sure that we're
25 all on the same page.

1 The Cross Section BB, which was part of the staff
2 report package, that was generated -- the cross section,
3 original cross section, came off of the Psomas
4 Engineering. The labeling that was done was prepared by
5 Board staff.

6 To clarify, the 30-foot crown width that's shown,
7 so that section reflects the as-builts for the levee that
8 was constructed in -- the as-builts from 1954 from the
9 U.S. Army Corps of Engineers for this particular location,
10 the two sections that were used were the one upstream of
11 the property and one downstream of the property, which
12 clearly shows at both locations that there is a 30-foot
13 crown width.

14 Based on that, we used with the 30-foot crown
15 width and then we did the 3 to 1 waterside slope to
16 determine the extent of the cut and the containers on the
17 waterside.

18 The argument from the respondent that staff
19 shifted the section or the line work -- or the center line
20 is not correct. We anticipated the arguments that what if
21 the levee section was right -- coincided with the center
22 line of Garden Highway, which, in this case, that's where
23 this alternate Section BB came about, showing what if the
24 center line of Garden Highway was the center line of the
25 levee, the as-built levee?

1 So therefore, we did the center line as 0, 0, and
2 we did a 15 foot offset to the land side and a 15 foot
3 offset on the waterside. From that point on, we took the
4 measurements from the plan view, which was what was
5 surveyed by Psomas Engineering and then we did a 3 to 1
6 slope. Now, that's -- this section shows that there was
7 still a 6 -- approximate 16 foot horizontal cut on the
8 levee on the waterside levee slope versus the section that
9 was part of the staff report that coincides with the
10 as-builts, that shows a cut of 19 feet roughly.

11 So there's like a 3 foot difference in the cut if
12 you shift the center line to the -- to Garden Highway. So
13 I just want to make a clarification. It's not that we
14 changed our position. It's just that we anticipated that
15 question being raised and therefore we prepared this
16 exhibit showing what that would look like.

17 PRESIDENT CARTER: Thank you.

18 Are there any members of the public that wish to
19 speak in support or opposition to the action before us
20 today?

21 Okay, seeing none.

22 Then I'd like to open it up for questions. I
23 know the Board has been very patient in holding their
24 questions. I appreciate that. We have all the evidence
25 on the table at this point.

1 So you're free to ask questions of anyone.

2 BOARD MEMBER BROWN: I'll start Mr. Chairman

3 PRESIDENT CARTER: Mr. Brown.

4 BOARD MEMBER BROWN: From our staff. It seems
5 like the location of the center line of the levee is
6 important to determine whether or not there is a cut for
7 the container boxes. How was that center line of the
8 levee established? Was it established from a benchmark or
9 did you just go ahead and take the center of the road as a
10 center line of the levee? How did you establish it? It
11 seems like you'd almost have to go from a benchmark to...

12 STAFF ENGINEER CALISO: If I may. Angeles Caliso
13 with the Board again.

14 The center line of Garden Highway corresponds to
15 the property limits. And this was based on the survey
16 that was prepared by Psomas Engineering, which -- let me
17 get that exhibit up, so can you see it.

18 But where you see the -- the center line here,
19 there's -- with a grate is corresponding to the center
20 line of Garden Highway. And it also corresponds with the
21 center line of the -- or the property limits to the
22 respondent's property.

23 BOARD MEMBER BROWN: But the question is how was
24 it established?

25 STAFF ENGINEER CALISO: The Psomas Engineering

1 has a prepared a record of survey or is in the process of
2 filing a record of survey in which they had to reestablish
3 all the property boundaries along the Natomas Basin.

4 BOARD MEMBER BROWN: So it was established from a
5 benchmark?

6 STAFF ENGINEER CALISO: Correct. Yes.

7 BOARD MEMBER BROWN: Okay.

8 PRESIDENT CARTER: Questions?

9 Ms. Rie.

10 VICE-PRESIDENT RIE: Yes, I have several
11 questions from various people.

12 The first question is for Mr. Taras. Mr. Taras,
13 in April of this year an Enforcement Order was sent out to
14 the respondent. And included in the Enforcement Order is
15 an order to cease and desist. Now according to the Water
16 Code 8709, only the Board has the authority to order cease
17 and desist.

18 So I'm wondering, why did we send out a cease and
19 desist order before the hearing was scheduled?

20 SUPERVISING ENGINEER TARAS: Curt Taras Chief of
21 Enforcement Branch.

22 The preparation of the -- what's Attachment A to
23 the staff report, which is the enforcement notice order
24 and conditions tightly follow Article 4 in Title 23
25 enforcement proceedings, which instruct that the General

1 Manager may institute an enforcement proceeding by serving
2 a notice by certified mail to the landowner. I'm
3 abbreviating this. The notice must state the acts or
4 omissions which the General Manager believes to be in
5 violation of this division.

6 The notice must specify the statutes. The notice
7 must also be accompanied by an order and that order must
8 state that the Board may seek judicial enforcement should
9 the respondent fail to respond to the notice.

10 VICE-PRESIDENT RIE: Okay, I understand that.
11 But in terms of ordering the removing of the work, that
12 comes with the Board decision.

13 Furthermore, the Water Code provides that only
14 the Board can order a cease and desist order. I
15 understand Title 23 allows the staff to send out the
16 notice and list what those violations are, but why did we
17 jump to a Board decision within the Enforcement Order,
18 ordering the removal of the work and ordering the
19 respondent to cease and desist? Why not wait until the
20 Board had the hearing to do that?

21 SUPERVISING ENGINEER TARAS: I'm reading the
22 Attachment A. And I don't believe -- could you point out
23 to me, ma'am --

24 VICE-PRESIDENT RIE: Yes

25 SUPERVISING ENGINEER TARAS: -- where the term

1 cease and desist was used in that document?

2 VICE-PRESIDENT RIE: Okay. Under encroachment
3 removal Enforcement Order, "You are therefore requested to
4 cease the encroaching activity and remove the
5 encroachments described in the enforcement notice".

6 So you're ordering them to cease and to remove.
7 And that comes with the Board decision. So I'm wondering
8 why is that in the Enforcement Order?

9 SUPERVISING ENGINEER TARAS: Well -- go ahead.
10 I'll defer to staff counsel, Ms. Robin Brewer.

11 VICE-PRESIDENT RIE: Well, who prepared the
12 Enforcement Order? Was it staff?

13 EXECUTIVE OFFICER PUNIA: In coordination with
14 the legal counsel. I think staff prepared in coordination
15 with the legal counsel.

16 DWR STAFF COUNSEL BREWER: Yes. And I'd like to,
17 if I may, direct your attention to Water Code Section
18 8709.5, which refers to activity encroaching on levees,
19 channel or other flood control works under jurisdiction of
20 the Board, specifically states that, "Notwithstanding
21 Section 8709 or 8709.4, if the Board or the Executive
22 Officer, if delegated authority by the Board, determines
23 any person or public agency has undertaken or is
24 threatening to undertake any activity that may encroach on
25 levees, channels, or other flood control works under the

1 jurisdiction of the Board, the Board or Executive Officer
2 may issue an order directing that person or public agency
3 to cease and desist".

4 It's our understanding that this Board has
5 delegated jurisdiction --

6 BOARD MEMBER SUAREZ: That is incorrect.

7 DWR STAFF COUNSEL BREWER: -- to the Executive
8 Officer.

9 BOARD MEMBER SUAREZ: That is incorrect. That is
10 incorrect.

11 DWR STAFF COUNSEL BREWER: Okay.

12 BOARD MEMBER SUAREZ: Delegation has not
13 occurred.

14 DWR STAFF COUNSEL BREWER: Okay.

15 BOARD MEMBER SUAREZ: That's actually part of the
16 Tier 1B process that seems to be stuck at this moment in
17 Mr. Taras's portfolio. But that delegation has not
18 occurred.

19 LEGAL COUNSEL SMITH: Mr. President, I could
20 provide a little guidance here.

21 PRESIDENT CARTER: Go ahead.

22 LEGAL COUNSEL SMITH: Actually, in Section 20(c)
23 in the Board's Title 23 regulations, it does give the
24 General Manager or Chief Engineer the authority to issue
25 an order for compliance with the Division, including an

1 order to stop work.

2 And procedurally, if a hearing is requested, then
3 a hearing is undertaken, which is what happened here. But
4 the General Manager does have the initial authority to
5 issue the order that was issued here.

6 BOARD MEMBER SUAREZ: An Enforcement Order?

7 LEGAL COUNSEL SMITH: Correct.

8 BOARD MEMBER SUAREZ: What section was that?

9 LEGAL COUNSEL SMITH: Section 20(c), in Title 23.

10 BOARD MEMBER SUAREZ: That's all very well, but
11 the code trumps the regulation. The regulations have to
12 be interpreted consistent with the code. And that your
13 interpretation of the regulation in this case would be
14 inconsistent with the code.

15 PRESIDENT CARTER: Well, ladies and gentlemen, I
16 guess my question would be -- this begs the question then,
17 if the staff initiates an enforcement proceeding, and the
18 respondent doesn't request a hearing, it will never come
19 before the Board. So if the staff can't issue an order to
20 remove the encroachment, then -- and it doesn't come
21 before the Board, with when does it happen?

22 VICE-PRESIDENT RIE: Well, the staff can issue a
23 letter of violation and in terms of what Ms. Smith just
24 said. As far as ordering the respondent to stop work, we
25 can't order the respondent to stop work in this case,

1 because the work happened 25 years ago, so that's not
2 applicable.

3 And it's the Board's prerogative to order the
4 work to be removed or not. And I feel that the staff has
5 jumped the gun by moving straight to Board decision
6 without delegated authority to do so.

7 Okay, the next question I have is -- for Mr.
8 Taras is regarding the easements. In 2008, a letter was
9 sent by Reclamation District 1000 stating that The
10 Reclamation Board or the Central Valley Flood Board had
11 easement rights. That, in fact, was not true.

12 So in 2009, our Board entered into a joint use
13 agreement with RD 1000. And what I want to know is did
14 this Board give authority to the staff to enter into that
15 joint use agreement?

16 SUPERVISING ENGINEER TARAS: I wasn't a
17 participant in the joint use agreement signing or creation
18 of it. I was hired April 2009, so that might predate my
19 involvement with the Board.

20 VICE-PRESIDENT RIE: The agreement was executed
21 in July 2009. Mr. Punia, do you want to answer that? Did
22 this Board give authority to staff to enter into a joint
23 use agreement with Reclamation District 1000 in July 2009?

24 EXECUTIVE OFFICER PUNIA: Maybe Ward has more
25 information, but I have been signing joint use agreements

1 for the projects, so that the projects can move forward.

2 VICE-PRESIDENT RIE: I understand that you have
3 been signing these, and that's not the question. The
4 question is did this Board give authority to enter into an
5 agreement for joint use on this property?

6 EXECUTIVE OFFICER PUNIA: I think I'm not coming
7 to the Board to get authorization on any specific project.
8 I'm under the impression that I have a blanket delegation
9 from the Board to sign the joint use agreement.

10 VICE-PRESIDENT RIE: Okay. And where is that
11 delegated authority? Where is that at?

12 EXECUTIVE OFFICER PUNIA: Let me look at Ward and
13 Robin to check and I'll check in the delegation too.

14 PRESIDENT CARTER: Mr. Tabor.

15 DWR ASSISTANT CHIEF COUNSEL TABOR: I don't have
16 the Board's delegation to Mr. Punia in front of me. But
17 it is certainly absolutely clear that the Board has
18 delegated to the Department to work with your Executive
19 Officer to acquire all the property necessary for the
20 Board's projects. And as you can see from the deed, the
21 joint use agreement, specifically for Sacramento River
22 Bank Protection Project. And this is the way the Board's
23 projects go forward, is the Department negotiates these
24 agreements.

25 As you can see on this one, I think I even signed

1 it myself. But this is the arrangement that the Board has
2 always used for the acquisition of property rights and
3 it's covered by your delegation, not only to the Executive
4 Officer but also to the Department of Water Resources.

5 VICE-PRESIDENT RIE: Mr. Tabor, where is that
6 delegation at? Where have we delegate the authority to
7 DWR to --

8 DWR ASSISTANT CHIEF COUNSEL TABOR: In the
9 Memorandum of Agreement that this Board executed with the
10 Department.

11 VICE-PRESIDENT RIE: Okay. So if you could
12 answer the question. So did the joint use agreement --
13 did it come before our Board for approval or was that
14 executed based on some agreement between the Board and
15 DWR?

16 DWR ASSISTANT CHIEF COUNSEL TABOR: This
17 agreement did come to this Board for its specific
18 approval.

19 VICE-PRESIDENT RIE: Okay. My next question is
20 for the respondent and his attorney.

21 MR. SIEGLITZ: Yes, ma'am.

22 VICE-PRESIDENT RIE: Were you aware that this
23 Board did not have an easement over your property and
24 entered into a joint use agreement with RD 1000 in July
25 2009?

1 MR. SIEGLITZ: I was not aware of that until
2 subsequent to all of this action occurring. And then part
3 of the stuff that -- the information that I received from
4 staff did include that joint use agreement.

5 That joint use agreement, as I understand,
6 only -- if it's in effect and legal, only allows
7 the -- this Board to have the same rights that have been
8 delegated by the original easements obtained on the
9 property.

10 And the joint use agreement really appears to
11 expand those voluminously beyond what the easement allows,
12 which I think was demonstrated by staff only, the
13 construction, maintenance and expansion of the levee.

14 VICE-PRESIDENT RIE: Did you give your permission
15 to RD 1000 to redelegate their easement rights --

16 MR. SIEGLITZ: No, ma'am.

17 VICE-PRESIDENT RIE: -- to our Board?

18 MR. SIEGLITZ: No, ma'am.

19 VICE-PRESIDENT RIE: So you had no knowledge of
20 it? You weren't aware of it?

21 MR. SIEGLITZ: That's correct.

22 VICE-PRESIDENT RIE: Okay. Thank you.

23 MR. SIEGLITZ: Thank you.

24 PRESIDENT CARTER: Any other questions?

25 VICE-PRESIDENT RIE: Yeah. This question is for

1 one of the staff. How wide is the easement for RD 1000?
2 What's the width of that easement?

3 BOARD MEMBER BROWN: I tried to find that on
4 Section BB and it's not there.

5 VICE-PRESIDENT RIE: I can't find it either.

6 MR. DEVEREUX: Ms. Rie, if I could, general
7 manager. Paul Devereux again.

8 The easement the District got in 1913 was from a
9 approximately the landside toe of the existing levee as
10 constructed to the bank of the Sacramento River. So it's
11 indeterminate width. It goes to the bank of the river and
12 then extends along the bank of the river.

13 VICE-PRESIDENT RIE: So there is no width?

14 MR. DEVEREUX: No. See the legal description
15 actually says to the bank of the Sacramento River.

16 BOARD MEMBER BROWN: To the toe or the bank?

17 MR. DEVEREUX: It says to the bank of the
18 Sacramento River is what the legal description says. In
19 other easements we've got, it says to the low water mark
20 of the Sacramento River, but the easement we got extends
21 all the way to the river on the waterward side.

22 BOARD MEMBER BROWN: Well, wait a minute. That's
23 not what you said.

24 MR. DEVEREUX: To the bank of the river.

25 BOARD MEMBER BROWN: You said to the bank of the

1 river. That may be all the way to the river and it may
2 not, right.

3 MR. DEVEREUX: Well, whatever the legal
4 description -- like I said, wherever the bank of the river
5 is, is determined by the legal description would say that.

6 BOARD MEMBER BROWN: Thanks, Paul.

7 VICE-PRESIDENT RIE: Are you talking about the
8 left bank, is that the bank?

9 MR. DEVEREUX: Yes, ma'am. The left bank of the
10 Sacramento River as you're looking downstream.

11 VICE-PRESIDENT RIE: Okay. So is the bank the
12 crown of the levee, is it toe of the levee? Where exactly
13 is the left bank by definition?

14 STAFF ENGINEER CALISO: If I may. Angeles Caliso
15 with the Board staff.

16 If you'll refer to staff report Attachment D,
17 which is the survey that was prepared by Psomas
18 Engineering. It was signed and stamped by the surveying
19 company who prepared the survey for the site. They
20 clearly delineate the flood control easement and their
21 delineation starts here at the Sacramento, which shows
22 just the channel here. And it goes -- extends all the way
23 across to the land side of the levee and is calling out
24 the flood control easements -- the limits of the flood
25 control easement that was recorded.

1 So those are the extents as defined by the -- a
2 licensed surveyor.

3 VICE-PRESIDENT RIE: Right. I understand the
4 license surveyor prepared a drawing, but the easement
5 simply refers to the left bank of the Sacramento River.
6 It doesn't specify what the left bank is. So, you know,
7 that could be interpreted in many ways.

8 MR. DEVEREUX: Yeah. I'm not a lawyer. I don't
9 know what -- how a legal opinion would be as to what's the
10 left bank of the Sacramento River. But as an engineer, I
11 would tell you that, in my opinion, gives me the rights
12 clearly out to the edge where at this time falls off to
13 the river.

14 DWR ASSISTANT CHIEF COUNSEL TABOR: Mr.
15 President, members of the Board, I'm repaired now the
16 answer Ms. Rie's question about the specific reference to
17 Mr. Punia's delegation order, referred to resolution
18 number 06-08, and paragraph 3, f, "Execution of contracts
19 involving services of the Board, including joint use
20 agreements". And it is signed by President Benjamin F.
21 Carter and Teri E. Rie.

22 VICE-PRESIDENT RIE: Mr. Tabor, that may be in
23 the agreement, but when you're conveying land rights,
24 specially easement rights and you're not the dominant
25 tenement owner of those rights, how can you transfer those

1 to a third party without permission of the fee title
2 owner?

3 DWR ASSISTANT CHIEF COUNSEL TABOR: The fee title
4 owner, in this case Valentine McClatchy, conveyed their
5 rights to RD 1000 in 1913. The joint use -- the purpose
6 of the joint use agreement is for a sharing, a creating a
7 joint tenancy, if you will, a tenancy in common between
8 flood control interests.

9 VICE-PRESIDENT RIE: Right. I understand that.
10 But under what authority can RD 1000 as an easement
11 holder, and as a subservient easement holder, convey those
12 rights to a third party without the permission of the
13 dominant tenement owner?

14 DWR ASSISTANT CHIEF COUNSEL TABOR: The
15 subservient interest in this case is the fee interest.
16 The dominant tenement is the easement interest. And RD
17 1000 has express authority in the Water Code to own real
18 property rights and to convey those easements.

19 VICE-PRESIDENT RIE: But they're simply easement
20 rights. They're not fee title rights. So --

21 DWR ASSISTANT CHIEF COUNSEL TABOR: They are
22 title rights to easements.

23 VICE-PRESIDENT RIE: -- my understanding of how
24 that works is that the property owner has to give
25 permission and has to be notified of any transfer of the

1 easement rights that they have granted.

2 DWR ASSISTANT CHIEF COUNSEL TABOR: There is no
3 such requirement in California law.

4 VICE-PRESIDENT RIE: Okay.

5 BOARD MEMBER SUAREZ: Mr. Tabor, may I ask you a
6 question.

7 DWR ASSISTANT CHIEF COUNSEL TABOR: Yes.

8 BOARD MEMBER SUAREZ: The agreement you just
9 referred to, has there never been a subsequent agreement
10 between this Board and DWR signed after the 2007
11 legislative overhaul of our authorities?

12 DWR ASSISTANT CHIEF COUNSEL TABOR: I'm not sure
13 if I follow your question. I was quoting from the Board's
14 resolution to the Executive Officer.

15 BOARD MEMBER SUAREZ: But since then we've
16 entered into new agreements with the Department, regarding
17 what things --

18 DWR ASSISTANT CHIEF COUNSEL TABOR: Correct. And
19 I have the MOA between the Board and the Department in
20 front of me.

21 BOARD MEMBER SUAREZ: I'm sorry. I mine in front
22 of me. Does that address the issue of delegation?

23 DWR ASSISTANT CHIEF COUNSEL TABOR: It certainly
24 delegates certain functions to the Department of Water
25 Resources.

1 VICE-PRESIDENT RIE: It wasn't the Department of
2 Water Resources who executed the agreement. It was --

3 DWR ASSISTANT CHIEF COUNSEL TABOR: You're
4 correct. And I was referring not to the MOA but to this
5 Board's delegation to your Executive Officer of the
6 authority to execute joint use agreements on behalf of the
7 Board.

8 VICE-PRESIDENT RIE: And what are you referring
9 to? Where did we delegate --

10 DWR ASSISTANT CHIEF COUNSEL TABOR: Resolution
11 number 06-08 general delegation of authority.

12 EXECUTIVE OFFICER PUNIA: This resolution was
13 passed when the this new board was appointed. I think at
14 that time frame they reclarified the delegation to the
15 Executive Officer or the General Manager at that time.

16 VICE-PRESIDENT RIE: Well, doesn't -- hasn't that
17 resolution been superseded with the 2007 legislation?
18 Because what that did was it removed all delegated
19 authority to the General Manager at that time and put that
20 authority back with the Board. And that is why our Board
21 has to hear every permit, because that delegated authority
22 is no longer applicable.

23 DWR ASSISTANT CHIEF COUNSEL TABOR: The new
24 legislation certainly removed any delegation from the
25 Board to the general manager for permit decisions. It did

1 not affect in any way the delegation relative to execution
2 of contracts and specifically joint use agreements. The
3 Board's authority to acquire and hold real property rights
4 was not changed by the legislation that was passed in
5 2007.

6 VICE-PRESIDENT RIE: Mr. Tabor, let's say that
7 ultimately this issue goes before a court. And the judge
8 has to decide whether or not this Board has rights, is
9 that going to be defensible based on a 2006 delegation of
10 authority that may or may not have been superseded by the
11 2007 legislation?

12 DWR ASSISTANT CHIEF COUNSEL TABOR: I am a
13 hundred percent confident that a court would maintain the
14 validity of this joint use agreement and the rights of the
15 Board.

16 VICE-PRESIDENT RIE: Even though this Board did
17 not authorize this joint use agreement, you're --

18 DWR ASSISTANT CHIEF COUNSEL TABOR: This Board
19 did authorize the joint -- your Executive Officer's
20 execution of this agreement.

21 VICE-PRESIDENT RIE: Through 2006 Board
22 resolution.

23 DWR ASSISTANT CHIEF COUNSEL TABOR: Yes, ma'am.

24 VICE-PRESIDENT RIE: And it's your contention
25 that that resolution is still valid except for the permit

1 authority?

2 DWR ASSISTANT CHIEF COUNSEL TABOR: Correct.

3 PRESIDENT CARTER: Any other questions?

4 BOARD MEMBER BROWN: Yes, I had one.

5 PRESIDENT CARTER: Is it on this subject?

6 BOARD MEMBER BROWN: It's on this subject.

7 PRESIDENT CARTER: Okay.

8 BOARD MEMBER BROWN: How do we handle the joint
9 use agreements or easements? How does this Board handle
10 those joint use agreements with subsequent criteria that
11 appears to be required within those easements? Does the
12 landowner have to be informed of those or agree to it or
13 is that something that the Corps has additional
14 requirements and this Board has additional requirements?
15 How is that handled?

16 DWR ASSISTANT CHIEF COUNSEL TABOR: Mr. Knox, in
17 his written materials, said that the Board can't acquire
18 anymore rights than RD 1000 have. And that's absolutely
19 correct. If the Board is deriving its rights from RD
20 1000, that agreement can't enlarge those rights to any
21 larger extent. So the Board's rights are limited to what
22 is covered by the joint use agreement and what is also
23 covered by RD 1000's rights in the 1913 grant.

24 BOARD MEMBER BROWN: Then a follow-up to that
25 question is, is this hearing in these requirements that we

1 now have, do they exceed those rights?

2 DWR ASSISTANT CHIEF COUNSEL TABOR: I don't
3 believe they do. They can't exceed those rights.

4 BOARD MEMBER BROWN: Thank you.

5 VICE-PRESIDENT RIE: Mr. Tabor, I have one more
6 question about the joint use agreement. At the end of the
7 joint use agreement, RD 1000 has given the Board the right
8 to redelegate these rights. Doesn't that authority exceed
9 the original easement?

10 DWR ASSISTANT CHIEF COUNSEL TABOR: No, ma'am.
11 In fact, the very purpose of this joint use agreement was
12 to be able to give specific written permission to the U.S.
13 Army Corps of Engineers to prosecute the Sacramento River
14 Bank Protection Project, which is a joint project between
15 the Corps of Engineers and the Central Valley Flood
16 Protection Board wherein it's the Board's responsibilities
17 to acquire for the project all the lands, easements, and
18 rights of way necessary for the project.

19 VICE-PRESIDENT RIE: Well, it doesn't say to the
20 Army Corps of Engineers. It says the Board may assign the
21 rights and responsibilities granted herein to a local
22 district responsible for the maintenance of project works.
23 It doesn't say redelegate to the Corps. So RD 1000 has
24 granted the Board rights of the easement and has in turn
25 granted additional rights to the Board to subsequently

1 redelegate the easement to another local district. Does
2 that exceed the original rights of the 1913 easement?

3 DWR ASSISTANT CHIEF COUNSEL TABOR: No, ma'am.

4 PRESIDENT CARTER: Ms. Suarez.

5 BOARD MEMBER SUAREZ: Thank you, Mr. President.
6 Just a point of clarification. The use agreement was
7 signed when? Was entered when, the date?

8 DWR ASSISTANT CHIEF COUNSEL TABOR: 2009 I
9 believe.

10 BOARD MEMBER SUAREZ: But the original easement
11 was --

12 DWR ASSISTANT CHIEF COUNSEL TABOR: 1913.

13 BOARD MEMBER SUAREZ: I'm just a little curious,
14 just for clarification, why did we in 2009 all of sudden
15 decide that we needed a use agreement? What's the history
16 lined that?

17 DWR ASSISTANT CHIEF COUNSEL TABOR: I can't
18 explain to you why the Board did not appear to have record
19 title before 2009. But what I can tell you is as we were
20 preparing to certify right of way for the Sacramento River
21 Bank Protection Project, we did a research of the Board's
22 property rights. Finding no express written rights in the
23 Board, we pursued the execution of a joint use agreement
24 with RD 1000, so that the Board could certify right of way
25 to the Army Corps of Engineers so that the work could be

1 done.

2 BOARD MEMBER SUAREZ: Does that, in any way --
3 since we legally didn't have any easement authority over
4 that prior to '09, does that, in any way, affect our
5 ability to enforce violations that predate '09?

6 DWR ASSISTANT CHIEF COUNSEL TABOR: Absolutely
7 not. The Water Code provisions are independent of whether
8 the board ounce property rights or not. The Board
9 exercises jurisdiction in designate floodways where it
10 owns absolutely no property rights.

11 The Board regulates encroachments in rivers where
12 it does not own any property rights. So it's regulatory
13 authority is independent of its authority to own property
14 and to cooperate with the Army Corps of Engineers in
15 building projects.

16 They're parallel authorities, but they're
17 independent of one another.

18 PRESIDENT CARTER: Mr. Hodgkins.

19 SECRETARY HODGKINS: I have a different question
20 for Mr. Tabor or staff, I'm not sure who. In enforcement
21 actions, we're dealing here with a system that, this was a
22 1913 easement. The Board's regulations went into effect
23 in 199 -- when

24 DWR ASSISTANT CHIEF COUNSEL TABOR: 1996, I
25 believe.

1 SECRETARY HODGKINS: Ninety-six. Somewhere in
2 the mid-nineties, okay. So the regulations sort of
3 codified a set of standards that sort of existed before
4 then. How should I, as a Board member, consider an
5 Enforcement Action think about the fact that there are
6 changes in the standards? Can you give me any help -- in
7 terms of, okay -- back fill requirements and what's
8 permissible. And as a civil engineer, you certainly are
9 used to changes in standards and -- but I still don't know
10 how to deal with that enforcement.

11 So any guidance that you could give me would be
12 helpful.

13 DWR ASSISTANT CHIEF COUNSEL TABOR: I think I can
14 perhaps address it. Whether it will give you complete
15 comfort, I don't know.

16 But the Board's jurisdiction to regulate
17 encroachments derives from Water Code Section 8710. And
18 that's what we're dealing with in this situation. It's
19 you need to get the Board's permission before you monkey
20 around with the levee. That's what the statute says.
21 Doesn't may monkey around. It says before you touch it,
22 cut it, add to it, do anything to it, you've got to get
23 the Board's permission. And that piece of law has been in
24 the Board's jurisdiction since its creation in 1911.

25 It wasn't Water Code section 8710 in those days,

1 but it was in the original act creating the Board. It
2 gave the Board that police power authority. And it was
3 essential three stop or control the levee wars that had
4 been going on in the valley prior to that.

5 Yes, the Board standards change, but the need for
6 a permit has been -- the need for approval has been there
7 from the very beginning and that's what we're dealing with
8 here. Not dealing with the quality necessarily of what
9 this is, it's the fact that these things happen without
10 the approval of the Board.

11 SECRETARY HODGKINS: Okay. May I ask another
12 question?

13 PRESIDENT CARTER: Yes you may.

14 SECRETARY HODGKINS: We have here an exhibit out
15 of Corps report that in effect would reflect the fact that
16 for purposes of moving forward, we have defined a levee
17 here as 20 foot top width, 3 to 1 side slope. That's not
18 necessarily what was the definition of the levee when the
19 project was constructed.

20 I guess -- and I'm not questioning in any way the
21 need for a permit. Don't get me wrong here. What I'm
22 trying to understand is, is it -- if -- how should we
23 think about the fact that the current definition of what's
24 required for public safety, which is the 20 feet, 3 to 1,
25 is different perhaps from what was the original design of

1 this project. And I don't think there is a formal cross
2 section about the original design is there?

3 DWR ASSISTANT CHIEF COUNSEL TABOR: The staff
4 report included as-built drawings from the U.S. Army Corps
5 of Engineers in the '53-'54 timeframe.

6 SECRETARY HODGKINS: Okay.

7 DWR ASSISTANT CHIEF COUNSEL TABOR: And
8 those -- while they're not at this exact location, they're
9 immediately upstream and downstream and they do show a 3
10 to 1 slope.

11 SECRETARY HODGKINS: And those are 1950 cross
12 sections.

13 DWR ASSISTANT CHIEF COUNSEL TABOR: Correct.

14 SECRETARY HODGKINS: I was looking for a date on
15 that and couldn't find one. That's helpful.

16 DWR ASSISTANT CHIEF COUNSEL TABOR: Correct, yes.
17 What was the date?

18 March 1952.

19 SECRETARY HODGKINS: Thank you. Thank you.

20 Anyway, can you offer me any guidance? Should I
21 even be thinking about the current definition that we're
22 using to decide what's necessary for public safety, in
23 terms of our action on this encroachment or should -- and
24 maybe that's my decision, not yours.

25 DWR ASSISTANT CHIEF COUNSEL TABOR: It's clearly

1 not my decision.

2 (Laughter.)

3 SECRETARY HODGKINS: You don't want to offer any
4 guidance here about whether it's really 20 foot top width,
5 3 to 1 side slope or 30 feet top width, 4.5 to 1 side
6 slope?

7 DWR ASSISTANT CHIEF COUNSEL TABOR: I do not, but
8 I do know that there is a wide variety of top widths on
9 major levees within the Board's jurisdiction. And --

10 SECRETARY HODGKINS: I assume we know that too.

11 DWR ASSISTANT CHIEF COUNSEL TABOR: Probably more
12 exceptions than compliance with the general cross section.

13 SECRETARY HODGKINS: Thank you.

14 PRESIDENT CARTER: I have a question for maybe
15 staff or Mr. Devereux. We're doing a lot of levee
16 improvement work here in the Natomas Basin, particularly
17 on the Sacramento River. SAFCA is the leader on those
18 efforts. In some areas along the Sacramento River, they
19 are adding to the land side of the levee making a super
20 wide levee. I have not heard anything with respect to
21 what kinds of improvements are planned or are ongoing in
22 this particular area at this river mile. What's happening
23 to the levee here and the levee cross section?

24 MR. DEVEREUX: Mr. Carter, this piece of the
25 levee is the piece that's going to be left to the Army

1 Corps of Engineers to complete as part of the finishing
2 off the project. I can tell you the preliminary work done
3 by the geotechnical engineers for SAFCA and the SAFCA
4 design staff had contemplated expanding the land side by
5 anywhere from 15 to 20 feet and then putting a 3 to 1
6 backside slope and then addressing levee underseepage with
7 either slurry wall for a berm. So it was -- it is
8 contemplated, at least in the SAFCA concept, to expand on
9 the land side anywhere from 10 to 20 feet. But again, the
10 final design and construction will be done by the Army
11 Corps of Engineers.

12 PRESIDENT CARTER: Ms. Nagy, would you like to
13 comment on any Corps plans here?

14 MS. NAGY: Yeah. I just want to make the
15 point -- this is Meegan Nagy from the Army Corps of
16 Engineers -- that the Congressional authority to do so is
17 not completed yet. So while that is the plan, we have to
18 have Congressional authority to do so. And the current
19 condition of the levee is not with an overbuilt section.

20 PRESIDENT CARTER: Thank you. Okay, any other
21 questions?

22 VICE-PRESIDENT RIE: I have another question for
23 Mr. Tabor.

24 Under Title 23, Article 7, Section 109, it's a
25 section on review -- right of review of delegated

1 authority. It says, "Any person or public agency having
2 an interest in a decision made by the director or the
3 Executive Officer of the Board to any delegation by the
4 Board, including those delegations in Section 5, and any
5 other delegation of authority has the right to review by
6 the Board in accordance with the requirements of Section
7 12".

8 So wouldn't the respondent have had the right to
9 review the joint use based on the delegated authority,
10 because he was affected by that decision?

11 DWR ASSISTANT CHIEF COUNSEL TABOR: Conceivably.

12 VICE-PRESIDENT RIE: Did that happen?

13 DWR ASSISTANT CHIEF COUNSEL TABOR: Did the
14 respondent bring a protest to this Board about the
15 execution of the joint use agreement? Not that I'm
16 familiar with.

17 VICE-PRESIDENT RIE: Was the respondent notified
18 that our Board staff was making a decision under the
19 delegated authority?

20 DWR ASSISTANT CHIEF COUNSEL TABOR: I assume not,
21 but I don't believe there was any requirement to do so.

22 MR. DEVEREUX: Ms. Rie, if I could. That joint
23 use agreement was approved by the RD 1000 board at a
24 public meeting, which we duly notified. We don't send out
25 individual notices to the landowners but we did do it with

1 a public notice and it's on our website, so it was done at
2 a public meeting of RD 1000.

3 PRESIDENT CARTER: Mr. Devereux, just for the
4 record, since we don't have a court reporter, could you
5 please introduce yourself?

6 MR. DEVEREUX: Yeah. Paul Devereux again,
7 general manager, Reclamation District 1000.

8 PRESIDENT CARTER: And we ask that -- all we are
9 doing is taping this, so that it can be properly
10 transcribed as you approach and address the Board on the
11 mic, please do introduce yourself each and every time.

12 Thank you.

13 Any other questions?

14 VICE-PRESIDENT RIE: Yeah. I wanted to follow up
15 on that question with Mr. Devereux.

16 Clearly the respondent had an interest in this
17 agreement. Did you notify him?

18 MR. DEVEREUX: Once again Paul Devereux general
19 manager Reclamation District 1000.

20 We didn't do individual notices -- because it
21 affected all the landowners who live along the Garden
22 Highway. But we did it through a public meeting with
23 our normal noticing, which is to post the agenda and post
24 it on our website.

25 VICE-PRESIDENT RIE: So you posted it on your

1 website, but you didn't send individual notices to the
2 affect property owners?

3 MR. DEVEREUX: No, ma'am, we did not.

4 VICE-PRESIDENT RIE: And a question for the
5 respondent, did you know about that hearing? Did you
6 receive notice?

7 MR. SIEGLITZ: Robert Sieglitz, respondent. No,
8 I did not know of the hearing. I didn't know about it
9 until I received it after the issues at hand came to fore.

10 VICE-PRESIDENT RIE: You received notice after
11 the fact?

12 MR. SIEGLITZ: Yeah. I received notice within
13 the last three months. I didn't know about it when it
14 occurred. It wasn't until the claims that are now being
15 made were made, that I got a copy of that.

16 VICE-PRESIDENT RIE: Okay. Thank you.

17 MR. SIEGLITZ: Thank you.

18 PRESIDENT CARTER: Any other questions?

19 BOARD MEMBER SUAREZ: Yes, Mr. President.

20 PRESIDENT CARTER: Ms. Suarez.

21 BOARD MEMBER SUAREZ: This is -- I'd like for
22 staff to address this issue and perhaps Mr. Sieglitz or
23 his attorney might also provide their opinion. I'd
24 actually like to look at the respondent's documents that
25 they presented to us this morning.

1 The first thing I want to address is the issue of
2 whether -- I'd like to establish whether or not or have a
3 discussion of whether or not there was an actual cut in
4 the levee toe. And a course there argument is that there
5 isn't. I kind of would like to amplify what we
6 mean -- what the legal definition of cut, the engineering
7 definition, so we can have some additional fact finding on
8 that matter.

9 And then the second item related to that, setting
10 aside the cut, would -- if somebody could put the
11 container boxes on the screen, that would be helpful --
12 whether or not they would be an obstruction under Section
13 112, I guess, (b) of our regulations. So again I'd like
14 an engineering and a legal discussion of what a cut is and
15 whether or not the containers would also be considered an
16 obstruction under our regulations.

17 STAFF ENGINEER CALISO: Angeles Caliso Board
18 staff.

19 Once again well refer to staff report Attachment
20 E, Cross Section BB foresight, which is up on the screen
21 at this point. And it clearly shows a 30 foot crown width
22 with a 3 to 1 projective slope. Now, the 3 to 1
23 projective slope that's shown here is what is now -- is
24 the minimum a slope required on the waterside of a levee
25 based on our regulations.

1 So that's why we used the 3 to 1. This is
2 what -- if the levee were to be built today, it would be
3 built with a 3 to 1 on the waterside and that is what is
4 shown on the waterside. So this 3 to 1 slope started at
5 the hinge point where the 30 foot crown width ended and it
6 went down and it met the existing ground, this dashed line
7 that you see here.

8 So, in essence what you have is, you have this
9 dashed line represents the existing ground and the red
10 solid line represents what the 3 to 1 slope should be. So
11 then the shaded area that's shown on this screen
12 represents the extent of the cut of the levee that would
13 have been -- or that was cut to place those containers.

14 BOARD MEMBER SUAREZ: And if I may interrupt, Mr.
15 Tabor, then legally the definition of cut, whether or not
16 they actually took a shovel and moved the dirt out, under
17 legal definition of cut, that's what she means. That's
18 what we're talking about, because they're contending they
19 never moved dirt to put those containers in.

20 SUPERVISING ENGINEER TARAS: This is Curt Taras
21 Chief of the Enforcement Branch. If you refer to the
22 report submitted by the Sieglitz's attorney on the first
23 page it says, "After the Conex boxes had been installed,
24 the Sieglitz cut away a portion of fill adjacent to the
25 levee". That is on page one of the October 29th report

1 that was submitted to the Board today.

2 This is Curt Taras. Thank you.

3 BOARD MEMBER SUAREZ: Could I have a legal
4 definition of the word "cut"?

5 DWR ASSISTANT CHIEF COUNSEL TABOR: I don't know
6 if there is a legal definition of the word "cut", but
7 there is a legal definition of the Board's jurisdiction in
8 this situation, 8710 of the Water Code.

9 "Every plan of improvement that contemplates the
10 construction, enlargement, revetment or alteration of any
11 levee, embankment, canal, or other excavation in the bed
12 of or along or near the banks of the Sacramento River or
13 any of their tributaries or upon any land adjacent thereto
14 or within any of the overflow basins thereof and upon any
15 land susceptible to overflow therefrom shall be approved
16 by the Board before construction is commenced".

17 So it doesn't matter whether this was the levee
18 or it was fill placed there, you can't be cutting it
19 without the Board's approval.

20 PRESIDENT CARTER: Go ahead.

21 BOARD MEMBER SUAREZ: And I'll allow Mr.
22 Sieglitz -- I'm sorry about mispronouncing your name --
23 attorney to respond. And in the same line of inquiry, I'd
24 like a discussion about what the term "obstruction" means
25 for purposes of our regulation. Again, if we can have the

1 picture of the tanks -- or storage bins.

2 MR. KNOX: I wouldn't to start with the question
3 of cut. I'm unaware of a specific legal definition of
4 cut. Cut would mean the dig or excavate. And as Mr.
5 Sieglitz has testified, he did not cut or excavate. That
6 projection of that red line on the drawing, it was not in
7 fact the real slope, has never been the real slope as long
8 as he's been there.

9 He did cut into the -- as he's acknowledged --
10 into to fill adjacent to the containers after the
11 containers had been situated to make his little pathway,
12 but that was into fill not into the levee proper.

13 And to respond to staff's notion that you can't
14 do that without a permit, that may be the case, but any
15 claim in that regard is now barred under the Statute of
16 Limitations that we've cited in our brief.

17 PRESIDENT CARTER: The obstruction issue, ladies
18 and gentlemen.

19 STAFF ENGINEER CALISO: Angeles Caliso Board
20 staff again. The photo up on the screen shows the
21 containers. And what is shown to your left is the
22 Sacramento River Flood Control Project, the east levee.
23 So as you can see here, the inspections aren't able to
24 occur at this location for once, because you have this
25 metal roof with the grass cover. That is if you're

1 driving through, inspectors couldn't see if there was any
2 problems with a levee at this location.

3 Furthermore, you have the containers placed so
4 close to the levee -- or actually cutting into the
5 original, what used to be the original levee, that it
6 would also prevent seeing if there was any problems or any
7 erosion taking place, anything within underneath that
8 cover.

9 So those would be the issues I think that staff
10 were concerned that prevent the reclamation district, the
11 local LMA from doing their regular operation in this area.

12 BOARD MEMBER BROWN: Mr. Chairman, may I?

13 PRESIDENT CARTER: Let's let Mr. Knox respond as
14 well.

15 MR. KNOX: I'm simply saying the containers --
16 the staff continues to insist that the containers somehow
17 obstruct visual inspection. They don't. In fact, the
18 cutting into the pathway allows the inspectors to go down
19 and see exactly what's happening. The containers and the
20 banks are visible from the Garden Highway from both
21 directions. There's not an obstruction there, we believe.

22 PRESIDENT CARTER: Mr. Brown.

23 BOARD MEMBER BROWN: To the staff, the question
24 seems to be that the containers should be removed because
25 of a cut made into the embankment, maybe for others

1 reasons. But let's make the assumption for a moment that
2 the embankment was eroded away as stated, and that the
3 containers were placed within the area that had been
4 eroded, but there was no cut to situate them. Is there
5 still reason then to remove the containers if you make the
6 assumption there was no cut?

7 SUPERVISING ENGINEER PORBAHA: Ali Porbaha, Board
8 staff. I would say anything that needs -- this is
9 definitely -- I guess nobody has doubt this is in the
10 floodway. And anything in the floodway needs to be
11 anchored and this one is not anchored first.

12 Also, during flooding, this may -- this structure
13 may float. And float of that may cause damages to
14 downstream to the bridge and go and hits the bridge piers
15 or go to the downstream properties and cause damages.

16 BOARD MEMBER BROWN: All right, question then. A
17 follow-up on that, is that those containers had been there
18 for 15 years.

19 SUPERVISING ENGINEER PORBAHA: We don't know.

20 BOARD MEMBER BROWN: No?

21 SUPERVISING ENGINEER PORBAHA: We don't know
22 when.

23 BOARD MEMBER BROWN: Well, he says 1994 they were
24 installed.

25 SUPERVISING ENGINEER PORBAHA: He shows

1 2000 -- no '94 there was no indication that this is there.

2 BOARD MEMBER BROWN: Well, let's make an
3 assumption for right now that it was '94. And since that
4 time we've had a couple really good floods to come down
5 the Sacramento River. Have these units been flooded
6 before and did they float off their foundations?

7 SUPERVISING ENGINEER PORBAHA: We don't know.
8 And also there isn't that it has not happened for the
9 last -- assume, if this is correct, 20, 25 years, does not
10 mean that it does not happen this year or next year.

11 BOARD MEMBER BROWN: All right. These -- well,
12 if the river had flooded to the flood stage where it would
13 flood these boxes, then we would know that. Are those
14 boxes anchored into the concrete? Is that concrete
15 they're setting on?

16 SUPERVISING ENGINEER PORBAHA: Not to my
17 knowledge. There is some concrete in one side to make it
18 level, but the other sides they are on the, you know,
19 ground as can you see from the picture. Other side, which
20 shows that this is on the concrete. If I may I will show
21 you a picture.

22 BOARD MEMBER BROWN: All right. If you were to
23 go ahead and make your case for the removal of these boxes
24 now with the assumption that they're installed in an
25 eroded area, and no cut was made, what's your strongest

1 argument for removing those boxes now?

2 SUPERVISING ENGINEER PORBAHA: Those boxes are in
3 the floodway.

4 BOARD MEMBER BROWN: Are what?

5 SUPERVISING ENGINEER PORBAHA: Are in the
6 floodway, in the floodway -- in the flood between
7 the -- this is -- we are talking about the waterside of
8 the. This is not the dry side. This is in the waterside
9 that's number one.

10 Number two, this has not been anchored.

11 Number three, it -- you know, nobody can --
12 everybody should have access to the slope. But this one,
13 if there are some emergencies, there is a need to get to
14 the slope, this will be obstructed, you know, equipment or
15 anybody to access to the slope.

16 BOARD MEMBER BROWN: Okay. Thank you.

17 MS. NAGY: This is Meegan Nagy from the Army
18 Corps of Engineers. Although the respondent admitted that
19 there was a cut and it's clear from the cross sections
20 that there is a cut from whatever mechanism within the
21 levee cross section, the Board has provided assurances
22 with the Corps to operate and maintain the project as
23 constructed and regardless if it is erosion or if it is a
24 cut the Board has the responsibility to restore the cross
25 section. And you would have to move the Conex containers

1 to properly perform that operation.

2 So I want to make it clear that regardless of
3 thousand cut was formed, the Board has the responsibility
4 to restore the cross section and those Conex boxes would
5 need to be moved to do that. Thank you.

6 BOARD MEMBER BROWN: Wait a minute. There's lots
7 of eroded areas along the Sacramento River up and down it
8 like that. And that's a lot of work, and a lot of time.

9 MS. NAGY: That's correct.

10 BOARD MEMBER BROWN: And it's our responsibility,
11 as I understand it. But what if we done get to all of
12 this within the next 20 or 30 years, or if we never get to
13 it?

14 MS. NAGY: That is a correct. There is a lot of
15 erosion within the system. It's still remains the Board's
16 responsibility to properly operate and maintain it. I
17 don't disagree that it's a large task. It's a big feat.
18 There is still a responsibility.

19 BOARD MEMBER BROWN: Well, we're recognizing the
20 responsibility, but I'm just wondering how we do that from
21 a practicality standpoint and how we treat people until we
22 get around to doing it?

23 MS. NAGY: It's clear in this case that there is
24 a cut in the levee and the residents of Natomas are at
25 risk because of that cut. I understand that it's

1 difficult, but we all the time come over difficult feats
2 to make the levee safer.

3 BOARD MEMBER BROWN: Thank you.

4 VICE-PRESIDENT RIE: Ms. Nagy, there's quite a
5 few trees on this slope. It looks like the slope has been
6 eroded for quite awhile. And with all the trees and the
7 steep slope that extends for quite a distance, do you feel
8 it's the respondent's responsibility to restore that levee
9 to as-built conditions or do you think it's this Board's
10 responsibility or is it the reclamation district's
11 responsibility?

12 MS. NAGY: From the Corps of Engineers
13 perspective, the Board provided assurances to the Corps,
14 so ultimately the Board is responsible from the Corps'
15 perspective.

16 VICE-PRESIDENT RIE: Okay. Thank you.

17 PRESIDENT CARTER: Ms. Suarez.

18 BOARD MEMBER SUAREZ: Mr. Tabor, just kind of
19 following up on Mr. Brown's discussion. Could you legally
20 help us understand -- setting side what the actual
21 conditions were, what legally we -- our authority allows
22 to us do. Because there seems to be there -- and it's a
23 reasonable discussion and consideration that
24 notwithstanding what the drawings show, this was a reality
25 they encountered on their property. And based on that

1 reality, it's not a cut.

2 So how are we supposed to reconcile the reality
3 on the ground versus what the -- what was built, the
4 design as-built?

5 DWR ASSISTANT CHIEF COUNSEL TABOR: Well, first
6 of all, you have the admission of the respondent that they
7 cut something. They claim they cut fill. The staff
8 believes and the Army Corps of Engineers believes, they
9 cut into the levee. In any event, there was a cut that
10 required the approval of this Board. And that approval
11 did not take place.

12 I did want to -- somebody asked about the term
13 obstruction. And believe it or not, there is a definition
14 in the Board's regulations for obstruction. I can read it
15 to you if you'd like. It doesn't deal with visibility
16 obstruction, but I think it may be pertinent and could be
17 helpful.

18 This is in Section 4 of your regulations
19 subdivision (y). "An obstruction means any natural, or
20 artificial structure or matter which may impede, retard,
21 or change the direction of the flow of water either in
22 itself or by catching or collecting debris carried by the
23 water".

24 So that's what an obstruction is and it sounds to
25 me like these Conex containers are obstructions, as well

1 as the driveway.

2 BOARD MEMBER SUAREZ: Thank you, Mr. Tabor.
3 That's very helpful. Mr. Knox?

4 MR. KNOX: Well, I just wanted to follow-up on
5 that by reminding the Board that whatever authority it has
6 in this regard proceeds from the original easement.
7 Everything is founded on the original easement by
8 McClatchy to RD 1000. That easement granted the right of
9 way for the purpose of building, constructing, enlarging
10 and maintaining a levee. Nothing with respect to these
11 Conex boxes has restricted RD 1000 or anybody else's
12 authority or ability to maintain the levee.

13 If you ever put together a program in which the
14 Board finds funding and is going to go up and down the
15 river and restore everybody's levees, including the areas
16 that Mr. Sieglitz identified simply on a half of an
17 afternoon, then that may be another matter, but that's not
18 where we are today. And it's simply not his
19 responsibility to take that on.

20 PRESIDENT CARTER: Mr. Knox, though, that
21 contradicts what we just heard in testimony with respect
22 to -- you mentioned maintaining the levee. The slope is
23 not at a design slope. Everyone admits that today. The
24 Conex boxes are inserted in a spot that was cut by nature
25 or by man. We don't know that for sure.

1 MR. KNOX: Well, not by this man, anyway.

2 PRESIDENT CARTER: But we are -- if we are to
3 maintain this levee and bring it back to a slope, those
4 Conex boxes -- I don't see how we can do that without
5 moving those Conex boxes. Do you have another solution
6 for that?

7 MR. KNOX: I don't think you can single out Mr.
8 Sieglitz at this time when you have up and down the river
9 plenty of areas where there is not this 3 to 1 slope that
10 is supposed to be standard.

11 If the Board ever adopts some sort of a program
12 at the Board's expense to restore that or to implement it
13 for the first time, in many instances, then maybe this is
14 a discussion we have to have. But I don't think that the
15 Board can single out Mr. Sieglitz at this time and
16 particularly in this regard when as I said, we believe the
17 Statute of Limitations precludes any action by the Board
18 on this matter under these facts.

19 PRESIDENT CARTER: Thank you.

20 BOARD MEMBER SUAREZ: Mr. President, I have just
21 one last line of inquiry, if I may?

22 PRESIDENT CARTER: You know we probably ought to
23 try and wrap this up, ladies and gentlemen.

24 VICE-PRESIDENT RIE: Could I ask a follow-up
25 question on the slope before you move on?

1 BOARD MEMBER SUAREZ: Sure.

2 VICE-PRESIDENT RIE: This question is for the
3 respondent. When did you purchase the property and what
4 year, and were those trees there when you purchased the
5 property?

6 MR. SIEGLITZ: We planted those trees that are
7 there. In fact, if we cut down one of the trees, one of
8 the trees happens to be located in and through the walkway
9 up there and we could count the rings on the tree to show
10 how long they've been there.

11 VICE-PRESIDENT RIE: Well, how old are the trees?

12 MR. SIEGLITZ: Probably planted about 1980 or so.
13 I don't know for sure. We planted them as little stubs.

14 VICE-PRESIDENT RIE: Approximately 30 years old?

15 MR. SIEGLITZ: Correct.

16 VICE-PRESIDENT RIE: And did you plant all the
17 trees or were some of those trees already there?

18 MR. SIEGLITZ: All the trees that are on the
19 levee itself were already there. You can see trees to the
20 right of the containers. Those are Oak trees that were
21 existing when we bought the property.

22 VICE-PRESIDENT RIE: Well, the tree I'm
23 interested in is the one on the left side of the picture.

24 MR. SIEGLITZ: The closest, we planted that.

25 VICE-PRESIDENT RIE: Okay. Now, there's other

1 trees further down. Were those trees already there on the
2 levee when you purchased the property? You're not sure?

3 MR. SIEGLITZ: To the best of my recollection,
4 all of the evergreen trees planted along the levee or on
5 the levee we planted.

6 VICE-PRESIDENT RIE: Okay, and then the Oak trees
7 were already there.

8 MR. SIEGLITZ: The Oak trees and the cottonwood
9 trees were already there.

10 VICE-PRESIDENT RIE: Depending on the age of the
11 trees, those trees wouldn't have been able to survive if
12 we had a 4 to 1 slope and then we cut it down to a 2 to 1
13 slope. It looks like that slope has been in that
14 condition for a long time, because of the way the trees
15 are situated.

16 MR. SIEGLITZ: It has been. In fact, the top of
17 that slope was -- we put a concrete curb in order to
18 support the road side edge of the walkway, the roofing.

19 VICE-PRESIDENT RIE: Okay, thank you. Thank you,
20 Ms. Suarez for yielding to my question.

21 BOARD MEMBER SUAREZ: Mr. President, may I?

22 PRESIDENT CARTER: Yes, you may.

23 BOARD MEMBER SUAREZ: Mr. Sieglitz?

24 MR. SIEGLITZ: Yes.

25 BOARD MEMBER SUAREZ: I just have one last

1 question to you. And it's kind of something that
2 is -- I'm trying to understand. You're obviously a very
3 educated person. You knew about this Board, because you
4 had come before us on other items on your property. I'm
5 struggling to understand why on these particularly terms,
6 especially on an item as huge as that is -- I mean, those
7 storage containers --

8 MR. SIEGLITZ: The Conex boxes.

9 BOARD MEMBER SUAREZ: -- are big.

10 MR. SIEGLITZ: Yes.

11 BOARD MEMBER SUAREZ: You knew of jurisdiction.
12 You knew that we were here. You knew that the State had
13 an interest on maintaining or flood control system, yet
14 you picked and chose which items you came to the Board to.
15 And I'm struggling to reconcile why?

16 MR. SIEGLITZ: The reason we did not get a permit
17 for the Conex boxes is because they are moveable
18 containers. They're basic --

19 BOARD MEMBER SUAREZ: But you didn't see a need
20 to come and confirm that with the Board?

21 MR. SIEGLITZ: No. I don't -- the same as with
22 the boat trailer that they're making, I didn't feel that I
23 needed --

24 BOARD MEMBER SUAREZ: How about the driveway and
25 the --

1 MR. SIEGLITZ: The new driveway that we have
2 recently started to build, I think that that's correct. I
3 probably should have come to the Board, but I knew that
4 there was some action to modify the levee by various
5 agencies. And the modification to the levee was going to
6 preclude use of the driveway off my neighbor's property,
7 so I wanted access at that end of my property directly
8 without coming through my neighbor's property. And I did
9 that without application. It was just something I did.
10 Sorry.

11 PRESIDENT CARTER: Thank you. Any other
12 questions?

13 Mr. Hodgkins.

14 SECRETARY HODGKINS: Mr. Sieglitz?

15 MR. SIEGLITZ: Yes, sir.

16 SECRETARY HODGKINS: You have said that what you
17 removed in here was fill.

18 MR. SIEGLITZ: Yes, sir.

19 SECRETARY HODGKINS: Can you again tell me why
20 you believe it was fill?

21 MR. SIEGLITZ: When we placed the Conex boxes,
22 there was a drive path -- a driveway ostensibly there. We
23 put a couple of concrete curbs adjacent to the --
24 perpendicular to the levee for the driveway for each one
25 of those Conex boxes.

1 Because they're Conex boxes and to be removed,
2 that's why we did not anchor them down. Although, it's
3 easily enough done. But the space between the levee
4 and -- or between the road and the edge of the Conex boxes
5 actually was rough at that time. We could walk through
6 there, but there was no walk path. So in some places we
7 cut, some places we actually took some sandbags and we
8 made up the walk path to go along there. So we actually
9 built up what was the original toe in that area in some
10 areas with sandbags, so we could create the walk path.

11 There was no toe there, so we had to even build
12 it up in some places. And we built it up to the height of
13 the curb at each end of the containers.

14 SECRETARY HODGKINS: You said you removed fill
15 when you removed the dirt between the containers and the
16 levee, and why do you think it was fill? I mean, it's a
17 vertical slope.

18 MR. SIEGLITZ: Oh, as -- thank you. As we heard
19 Mr. Devereux say from the Reclamation District, the levee,
20 as it was constructed, was constructed of dredge material,
21 which is basically sand and silt. All of the material
22 that's there, that's along that is not sand and built and
23 consists of clay material, caliche type material, some
24 types of growth matter. And in addition to small amounts
25 of broken brick and broken concrete.

1 Now, these were not original levee materials.
2 These were things that had just been dumped on the levee.
3 Just the property downstream from us still has those in
4 very good evidence as to what that consists of.

5 SECRETARY HODGKINS: But you also stated in the
6 case of your driveway that you clearly understood or at
7 least that in your opinion the driveway reinforced the
8 levee.

9 MR. SIEGLITZ: That's correct.

10 SECRETARY HODGKINS: And so this fill would you
11 have reinforced the levee. Is that true?

12 MR. SIEGLITZ: The fill -- yes, I -- yes, the
13 fill would actually reinforce the levee. In fact, the
14 containers reinforce the levee. If you look at the
15 photographs immediately south of the containers, you'll
16 notice that the fill has been washed away because the
17 rains and water and stuff and debris has washed out more.
18 So it's actually washed out more than this cut area that's
19 much issue now. And this isn't even in the area of the
20 containers. It's just immediately south of the containers
21 along the same driveway path where we put the containers.

22 SECRETARY HODGKINS: And what was the use of the
23 property before you acquired it?

24 MR. SIEGLITZ: It was vacant land.

25 SECRETARY HODGKINS: There was never a house here

1 before you put yours there?

2 MR. SIEGLITZ: No, sir.

3 SECRETARY HODGKINS: But this driveway was here.
4 Did you construct the driveway that was here when you put
5 the containers here in ninety --

6 MR. SIEGLITZ: No, sir. This driveway actually
7 started from the lower end, from one of the neighboring
8 lots and went up and came out at the -- at a lot upstream,
9 rather than on our property whatsoever. It was just an
10 access, because there is a boat ramp downright off of our
11 property that I assumed the McClatchies used for launching
12 boats. So that was the probably the purpose of that
13 driveway. Although, the original easement that was
14 granted states that the reclamation district will build a
15 driveway of gradual slope. And this might be the gradual
16 slope driveway that was built by the reclamation district.

17 SECRETARY HODGKINS: But in effect so that the
18 area had been altered in terms of grading before you
19 acquired the property to the construction of this
20 driveway?

21 MR. SIEGLITZ: Yes. If the reclamation district
22 constructed it in 1922 or when they actually built those,
23 yes they actually probably built the levee. They might
24 have used that for their dredging material, but yes it was
25 altered at that time. Does that answer your question?

1 SECRETARY HODGKINS: All right. Thank you.

2 MR. SIEGLITZ: Thank you.

3 PRESIDENT CARTER: Okay, ladies and gentlemen, we
4 need to wrap up.

5 DWR ASSISTANT CHIEF COUNSEL TABOR: Mr.
6 President, if I could respond to one of the assertions by
7 respondent's counsel, Mr. Knox. He seems to not only
8 imply but state that your jurisdiction to regulate
9 encroachments is tied to your property interests. And
10 that is absolutely incorrect. 8710, which came into
11 effect 1911 doesn't require any property ownership. And
12 in fact, the Board owned no property in 1911, so it
13 couldn't have based it upon property rights.

14 And 8608 which is staff cited in their staff
15 report about the Board's establishment and enforcement of
16 levee standards once again is not tied to any requirement
17 for owning property to do so.

18 PRESIDENT CARTER: Thank you.

19 All right, ladies and gentlemen, comments? Let's
20 end the question period. What's your pleasure?

21 BOARD MEMBER BROWN: Mr. Chairman, I am not
22 convinced that there was a cut made by the applicant to
23 install these container boxes. But that's not my concern.
24 Having worked with large drainage channels and rivers
25 during flood storms and trying to deal with obstructions

1 that come down the river and block the culverts and
2 bridges and such is the concern.

3 While these containers may provide a source for
4 eddies and erosion to occur, which is a concern within
5 that near embankment, but it's obvious they are
6 obstructions. And to that extent, I think they should be
7 removed.

8 PRESIDENT CARTER: Okay. Ms. Suarez.

9 BOARD MEMBER SUAREZ: Thank you, Mr. President.
10 I was wondering, Mr. Punia, and maybe you can help us, or
11 Mr. Taras can help answer this question if possible, are
12 there -- there are three items here. There's the
13 container and the roof or the walk area and there's
14 the -- and there's the driveway. Any of these items, if
15 they came to the Board for permitting would they be able
16 to get a -- I mean, meet the standards and get the permit?
17 In other words, if they came to us for permit on the
18 driveway, would you be able to recommend the granting of
19 such a permit?

20 EXECUTIVE OFFICER PUNIA: The answer is no.

21 BOARD MEMBER SUAREZ: Okay, thank you. That's
22 helpful.

23 PRESIDENT CARTER: Okay. Comments?

24 SECRETARY HODGKINS: Just if I could generally, I
25 personally think that the levee section has been altered

1 and that's what enabled these containers to be placed
2 here. I don't think we know what did it. It's my opinion
3 that had you come forward for a permit, you never would
4 have gotten it to do this, because of the fact that the
5 roof totally hides the levee. And while you can get down
6 there when it's dry, you sure can't see what's going on
7 there when it's wet.

8 And so I believe the containers should be
9 removed, the roof, and the levee restored. I would ask
10 staff in considering this, and I hope we're going the go
11 through the same exercise we went through last time, where
12 they come back, to think about the fact of whether or not
13 you are seriously suggesting that every boat and trailer
14 along the Garden Highway has to be removed from the
15 property during the flood season, especially when we've
16 got all those permitted docks that have boats tied up to
17 them. I'm trying to understand the difference between the
18 boat mover or whatever it's called and all of the other
19 mobile property that is allowed to go in here. And I'm
20 not -- I just can't seriously see why that has to be
21 removed when I hope we're not going to try and say you
22 can't park a boat down here in the winter.

23 PRESIDENT CARTER: Okay. Comments?

24 Ms. Rie.

25 VICE-PRESIDENT RIE: Based on the photograph, it

1 appears that the slope has been 2 to 1 or 1 to 1 for quite
2 awhile. And the trees have grown on the slope. If that
3 slope was two years ago 4 to 1, those trees could not have
4 grown the way they've grown. And in the Enforcement Order
5 that the staff already prepared in the decision that the
6 staff already repaired, they ordered the respondent to
7 restore the slope.

8 I don't see that that is likely to happen. I
9 think that it's ultimately the Board's responsibility and
10 RD 1000's responsibility to maintain the levee slopes.
11 Obviously, these trees have been growing for 30 years, the
12 slope has eroded and it hasn't been maintained. I don't
13 feel that it's the respondent's responsibility to restore
14 this slope. And even if we ordered the respondent to
15 restore the slope, it's not likely that the resource
16 agencies would grant permits to remove those trees and
17 rebuild that slope at a 4 to 1.

18 I'm interested to hear how our Board staff and RD
19 1000 staff is going to address these levee slope issues.
20 There's obviously trees, lack of maintenance, erosion, and
21 it's not isolated to this alone. It's all along this
22 section of the levee.

23 And anyway, I think it's someone else's
24 responsibility to restore this slope. The boxes are
25 obviously the responsibility of the respondent. They put

1 them there, but they're saying they didn't cut into the
2 slope. That has occurred over time and it's throughout
3 this region.

4 PRESIDENT CARTER: I think the -- clearly, none
5 of this work has been permitted. Even the trees, that are
6 not a subject of this proceeding, should not have been
7 planted without a permit, that were planted 30 years ago.
8 The boxes and the roof clearly obstruct views and
9 inspections during high water. The inspectors don't
10 routinely get out of their vehicles and walk down
11 because -- to look around things that are in the floodway.
12 They drive along the road and they clearly cannot see the
13 levee slope with that -- with those, shall I say, in
14 quotations "improvements" to the property.

15 I think they clearly need to be removed. The
16 roof needs to be removed, and the applicant needs, if they
17 wish to do such things, they need to apply for a permit.

18 So we have an option here ladies and gentlemen.
19 The staff has a recommended action. If we can have the
20 staff put that on the screen, please, and the Board can
21 consider that as an option and modify it as it sees fit,
22 so that we can prepare a written Record of Decision.

23 MR. SIEGLITZ: Mr. Chairman, can I respond to
24 some of the comments made?

25 PRESIDENT CARTER: No, I'm sorry. Everyone's

1 time is up as far as testimony.

2 So ladies and gentlemen, this is the staff
3 recommendation. What's the pleasure of the Board at this
4 point?

5 BOARD MEMBER SUAREZ: Mr. President, I think Ms.
6 Rie raises an important issue regarding the matter of
7 restoration of the levee slope. I would like to hear from
8 other Board members. In my mind, the removal should be
9 their responsibility, but I'd like a little more
10 discussion regarding whether the order should include a
11 demand of restoration of the levee slope when there will
12 be many reasons why that slope was in the condition that
13 it was in and not at the fault of the respondent.

14 PRESIDENT CARTER: Okay. I'll start off. I tend
15 to agree with Ms. Rie. I think that the levee slope
16 clearly has been altered whether it was by nature or by
17 human means, we don't know. The respondent claims that
18 they did not do that. I will give them the benefit of the
19 doubt. They say they merely placed the containers in this
20 void, in the levee slope that was there in the 1950's. So
21 I think it's my opinion, with respect to the boxes, that
22 it's -- it was a preexisting condition and it's probably
23 the local maintaining agency's, the State's responsibility
24 to restore that slope at some point.

25 With respect to the driveway, that's clearly an

1 encroachment placed by the respondent and they are
2 responsible for removing all that material. And putting
3 that back to the original condition. That's my opinion.

4 BOARD MEMBER BROWN: Mr. Chairman, I concur with
5 your opinion. I think if you look up and down the river,
6 you'll see erosion taking place similar to this area. And
7 I don't believe that's the applicant's responsibility.
8 And to that end, I would support their not having to be
9 responsible for restoration of that slope, but I would
10 support their being responsible for the removing of the
11 containers such that they don't break loose and end up
12 downstream someplace and having to contend with later on.

13 And with the removal of the containers, it would
14 necessitate the removal of the extended driveway. So I
15 would support action favoring those two items.

16 PRESIDENT CARTER: Any other comments?

17 VICE-PRESIDENT RIE: I just have a comment about
18 the driveway, that the easement did state that RD 1000
19 would provide a driveway. So by asking them to remove the
20 driveway, are we removing their access to their property?

21 PRESIDENT CARTER: I think the evidence indicated
22 that they have access to the property at a location north
23 of that.

24 EXECUTIVE OFFICER PUNIA: That's correct.

25 STAFF ENGINEER CALISO: Angeles Caliso, Board

1 staff. If I may, that is correct Mr. President, they do
2 have a driveway north. There is a primary driveway that
3 provides access to the residence -- to the respondent's
4 property. The driveway that is in question is the one
5 down here at the southern portion of the property, which
6 we refer to as the secondary driveway.

7 PRESIDENT CARTER: So the answer to that question
8 is no we're not removing access to their property.

9 VICE-PRESIDENT RIE: Okay. Thank you.

10 PRESIDENT CARTER: Any other comments? Anyone
11 wish to comment on Ms. Suarez's question?

12 BOARD MEMBER SUAREZ: Can I comment on my
13 question?

14 PRESIDENT CARTER: Absolutely.

15 BOARD MEMBER SUAREZ: Could it be possible, and
16 this is a question or to Mr. Punia, to draft -- or our
17 legal staff, to draft an Enforcement Order that excludes
18 the portion regarding restoration of the slope at the
19 burden of the respondent?

20 PRESIDENT CARTER: Yes. Actually, we have a
21 member of the Board staff that has not been involved in
22 the Enforcement Action, Mr. Gary Lemon, who was been in
23 attendance here all morning taking notes. He is the
24 designated Board staff person to help draft an Enforcement
25 Order. And he, in consultation with Ms. Smith, I'm sure

1 can draft an order to that effect.

2 SECRETARY HODGKINS: I support that idea very
3 much. I think that makes sense. We haven't talked at all
4 about the boat mover. And I personally -- it's mobile. I
5 don't think we're going to say you can't have a boat down
6 here, and the property owner said he'd move it any time
7 anybody asked him to, as long as it's in a condition where
8 he can move it. That's --

9 PRESIDENT CARTER: I agree. If it's on wheels,
10 it's moveable within a matter of minutes, if not hours.
11 But those containers are not readily moveable. And they
12 do obstruct the view of an inspection of the levee.

13 Is staff able to draft an order to the effect of
14 the wishes of the Board?

15 SUPERVISING ENGINEER TARAS: This is Curt Taras
16 Enforcement Branch Chief. I have the original enforcement
17 notice in front of you on the screen. If the Board would
18 like the make edits to that, provide that to the abrogated
19 staff, I think that would help them understand what the
20 Board is voting on today. So I invite you to strike or
21 add to this -- it's Attachment A in your packets. If you
22 feel some changes need to be made to that, this may be the
23 time to do that and then take a vote, as if it was a
24 resolution.

25 MR. SIEGLITZ: Your notice that doesn't address

1 what we just talked about. That adds others items and
2 doesn't include the right once.

3 VICE-PRESIDENT RIE: Well, I don't think we're
4 voting today, correct, Mr. Carter?

5 PRESIDENT CARTER: The Board has the option to
6 vote today with written findings. Following that, if we
7 do vote today, we have to make it very clear in the record
8 exactly what the evidence is that we're using to support
9 the decision.

10 VICE-PRESIDENT RIE: But we don't have to, right?

11 PRESIDENT CARTER: But we do not have to vote
12 today. No, it's not a requirement.

13 VICE-PRESIDENT RIE: I would say that Mr. Lemon
14 should put together a decision based on the input from
15 Board members today. And that discussion didn't include a
16 lot of those items on the Enforcement Order that was
17 already set. So my preference is to not vote but to be
18 presented with options at the next hearing.

19 PRESIDENT CARTER: Okay.

20 VICE-PRESIDENT RIE: And then we'll make the
21 decision at that time.

22 PRESIDENT CARTER: I think we have enough
23 evidence and I think it's relatively straightforward that
24 we probably can vote and move on. If there -- I
25 understand Ms. Rie that you'd like to see the written

1 decision. I think we can make that fairly clear for the
2 record today and take action.

3 BOARD MEMBER BROWN: I'm in favor of giving the
4 applicant a proper decision as soon as possible on this.
5 I think it's to their benefit as well as to ours.

6 PRESIDENT CARTER: And that means you're in favor
7 of deciding today?

8 BOARD MEMBER BROWN: In favor of limiting the
9 Enforcement Action to the removal of the containers and
10 the secondary driveway and the fill that was placed on the
11 embankment, period.

12 PRESIDENT CARTER: Okay.

13 VICE-PRESIDENT RIE: Could you repeat that.

14 BOARD MEMBER BROWN: I'm in favor of the order
15 requiring the removal of the containers and the removal of
16 the secondary driveway and the fill placement supporting
17 the driveway.

18 VICE-PRESIDENT RIE: And that's it?

19 BOARD MEMBER BROWN: Yes, ma'am.

20 VICE-PRESIDENT RIE: Okay, I'll second that.

21 LEGAL COUNSEL SMITH: And procedurally as Mr.
22 Carter said -- this is Deborah Smith for the record.
23 Procedurally, the Board does need to adopt written
24 findings. So what you could do is adopt portions of or
25 the whole of the staff report or, as Mr. Carter stated,

1 you can list out what findings the Board is making and
2 direct your staff, Mr. Lemon, to make findings consistent
3 with the decision the Board makes today, and bring those
4 back at the next or subsequent meeting.

5 PRESIDENT CARTER: Okay. Two options. We could
6 try and list out for the record right now the
7 written -- or the findings that we are -- that are the
8 basis for the decision. We could take a 10 minute recess
9 and have Board staff confer and generate those and we can
10 come back. What's your pleasure?

11 BOARD MEMBER SUAREZ: I'd like that idea, Mr.
12 President. Mr. Brown, just for clarification, on the
13 driveway, were you also -- the order included restoration
14 when it comes to the driveway, like Mr. Hodgkins
15 noted -- I think it was you who noted that -- you know,
16 they clearly altered the levee in that case.

17 BOARD MEMBER BROWN: I don't know that any
18 restoration would be necessary, if they just put placement
19 fill on top of the embankment to support the driveway. It
20 doesn't sound like it was compacted. And I think just
21 removal of the driveway to prevent eddies from forming
22 around the material that's placed there now, I don't see
23 the necessity of doing anything more than that right now.

24 VICE-PRESIDENT RIE: And, President Carter, I
25 would prefer to have the staff take our direction and come

1 back with the findings at is next hearing --

2 PRESIDENT CARTER: Okay.

3 VICE-PRESIDENT RIE: -- rather than do it now,
4 because I also have to leave.

5 PRESIDENT CARTER: Okay.

6 BOARD MEMBER BROWN: I'm okay with that, if
7 that's the wishes of the Board.

8 PRESIDENT CARTER: Okay. Mr. Hodgkins, do you
9 have any thoughts?

10 SECRETARY HODGKINS: I'd like to hear it today,
11 but I'm willing to work with the rest of the Board,
12 however, to make it consistent.

13 PRESIDENT CARTER: Okay.

14 SECRETARY HODGKINS: And I do have a 2 o'clock
15 commitment.

16 PRESIDENT CARTER: Okay. Just how long would it
17 take you to pull together some findings for us?

18 LEGAL COUNSEL SMITH: Well, I'd be working with
19 Mr. Lemon. The goal would be to get the proposed written
20 findings, proposed decision to both parties the respondent
21 and staff and the Board at least 10 days before the next
22 meeting, which I -- I don't know that we have a set date
23 for the next meeting.

24 PRESIDENT CARTER: I'm talking about today?

25 LEGAL COUNSEL SMITH: Oh today?

1 PRESIDENT CARTER: If we were to take a recess,
2 can we pull together findings that we can verbally enter
3 into the record for a basis of decision today and how long
4 would that take?

5 LEGAL COUNSEL SMITH: I guess it depends on what
6 the findings are. I think we could make an effort to do
7 it.

8 BOARD MEMBER BROWN: Mr. Chairman, I'm in
9 agreement with Ms. Rie now. I think that -- let's draft
10 the findings and the draft order and give the applicant an
11 opportunity to review those before the Board votes on it.

12 PRESIDENT CARTER: Okay. All right, let's do
13 that. Does staff have any questions, in terms of the
14 Board's direction with respect to its proposed decision?

15 Mr. Lemon.

16 STAFF ENGINEER LEMON: Yes. Gary Lemon, Board
17 staff. I'd like some clarification on the cut into the
18 fill. Are you addressing that or not addressing that?

19 PRESIDENT CARTER: The Board's direction, at this
20 point, is that the cut into the fill with respect to where
21 the boxes are --

22 STAFF ENGINEER LEMON: Correct.

23 PRESIDENT CARTER: -- was preexisting boxes and
24 that the respondents are not responsible for restoration
25 of the levee slope in that area.

1 So the order is to remove the Conex boxes, the
2 roof, and materials associated with that, to remove the
3 secondary driveway and all the materials placed on the
4 levee slope with respect to the secondary driveway.

5 STAFF ENGINEER LEMON: Understood.

6 SECRETARY HODGKINS: If I look at the original
7 order, Mr. Carter and other Board members, it included the
8 flush concrete pad under the containers and some utility
9 lines associated with the containers. I would assume that
10 we want to include that in the stuff to be removed.

11 PRESIDENT CARTER: Yes.

12 MR. SIEGLITZ: And those are part of the fence
13 that we have the application --

14 PRESIDENT CARTER: Sorry, you're not on the
15 record. They were part of the staff report. They're
16 apart of the original enforcement; is that correct?

17 SECRETARY HODGKINS: Yes.

18 VICE-PRESIDENT RIE: But we didn't include those
19 in our recommendation.

20 PRESIDENT CARTER: I think Mr. Hodgkins just did.

21 SECRETARY HODGKINS: I did. I think, Mr. Lemon,
22 that you're going to have to do some technical work to
23 figure out if some of the stuff that we're talking about
24 requiring removal of is permitted and not include that in
25 the Enforcement Order.

1 STAFF ENGINEER LEMON: I will do that.

2 PRESIDENT CARTER: Very good. Okay, you are in
3 agreement, Ms. Smith.

4 LEGAL COUNSEL SMITH: It looks like Mr. Lemon was
5 taking good notes, so I will assist him as needed.

6 PRESIDENT CARTER: Okay. Mr. Punia.

7 EXECUTIVE OFFICER PUNIA: Our commitment to the
8 U.S. Army Corps of Engineers is that the levee cross
9 section will be restored. So probably maybe the Board can
10 ask the General Manager of RD 1000 that if the Conex boxes
11 are removed that whether they will be willing to restore
12 the levee to the proper cross section.

13 PRESIDENT CARTER: That's probably for the topic
14 of another meeting, and another action. That may be
15 incorporated as part of a project that the Corps is doing,
16 in terms of repairing or improving this section of the
17 entire Sacramento River levee.

18 EXECUTIVE OFFICER PUNIA: I want to remind the
19 Board that the Corps letter stressed that the levee slope
20 should be restored before the flood season.

21 PRESIDENT CARTER: Okay, we understand.

22 VICE-PRESIDENT RIE: President Carter, do you
23 need a vote before I leave?

24 PRESIDENT CARTER: I do not believe we need a
25 vote. We've given staff direction --

1 VICE-PRESIDENT RIE: Okay.

2 PRESIDENT CARTER: -- and the vote will be when
3 we get the written Record of Decision.

4 VICE-PRESIDENT RIE: Okay, thank you.

5 PRESIDENT CARTER: Thank you.

6 So we will be back and we will notify Mr.
7 Sieglitz and Mr. Knox when this will come back to the
8 Board for final decision.

9 Thank you very much. This hearing is adjourned.

10 (Thereupon the Central Valley Flood Protection
11 Board meeting adjourned at 12:22 p.m.)
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CERTIFICATE OF REPORTER

I, JAMES F. PETERS, a Certified Shorthand Reporter of the State of California, and Registered Professional Reporter, do hereby certify:

That I am a disinterested person herein; that the foregoing California Central Valley Flood Protection Board open session meeting was electronically recorded and thereafter transcribed in shorthand by me, James F. Peters, a Certified Shorthand Reporter of the State of California, under my direction, by computer-assisted transcription.

I further certify that I am not of counsel or attorney for any of the parties to said meeting nor in any way interested in the outcome of said meeting.

IN WITNESS WHEREOF, I have hereunto set my hand this 4th day of November, 2010.

JAMES F. PETERS, CSR, RPR
Certified Shorthand Reporter
License No. 10063